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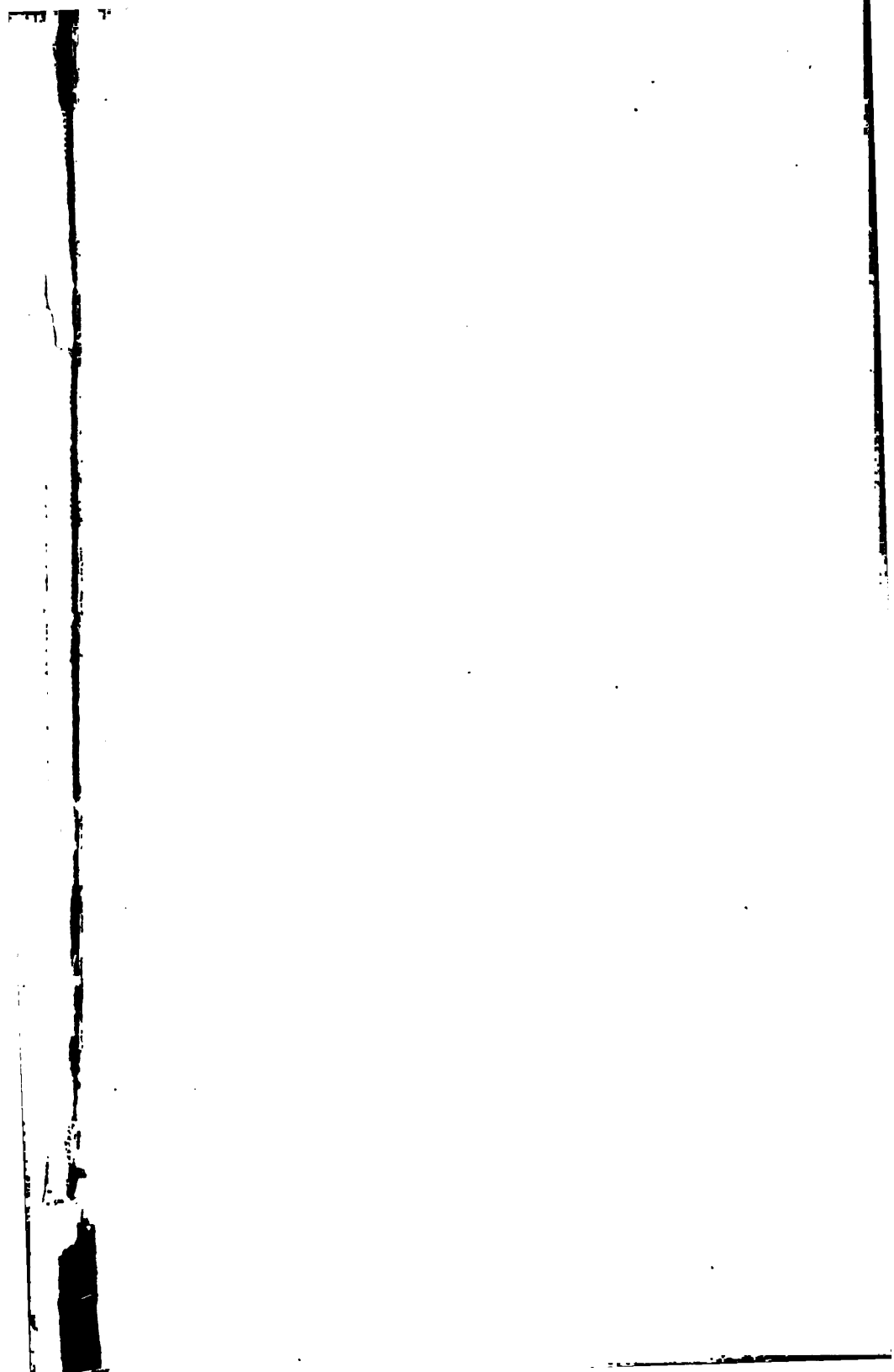
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TWENTY-THIRD ANNUAL REPORT

OF THE

Board of Railroad Commissioners

OF THE

STATE OF NEW YORK

1905,

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VOLUME I.

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TRANSMITTED TO THE LEGISLATURE JANUARY 8, 1906.

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COMMISSIONERS:

GEORGE W. DUNN,	FRANK M. BAKER,
JOSEPH M. DICKEY,	GEORGE W. ALDRIDGE,
HENRY N. ROCKWELL.	

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# STATE OF NEW YORK.

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No. 4

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## IN SENATE,

JANUARY 8, 1906.

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### TWENTY-THIRD ANNUAL REPORT

OF THE

### Board of Railroad Commissioners

ON THE

### RAILROADS OF THE STATE.

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STATE OF NEW YORK:

BOARD OF RAILROAD COMMISSIONERS,

ALBANY, *January 8, 1906.*

Hon. M. LINN BRUCE, *Lieutenant-Governor, Albany, N. Y.:*

SIR.—The Board of Railroad Commissioners herewith transmits its twenty-third annual report to the Legislature.

Very respectfully,

JOHN S. KENNEDY,

*Secretary.*

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# REPORT.

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## STATE OF NEW YORK:

BOARD OF RAILROAD COMMISSIONERS,

ALBANY, January 8, 1906.

*To the Honorable the Legislature of the State of New York:*

Pursuant to the requirements of the Railroad Law, the Board of Railroad Commissioners submits its twenty-third annual report.

### STEAM SURFACE RAILROADS.

The statements under this title all refer to what are known as steam surface railroad companies (a small portion of the mileage being operated by electricity exclusively and a small portion of the mileage being operated by both steam and electricity). The figures given are from the reports of such companies (published in the second volume of this report) for the fiscal year ending June 30, 1905, except where otherwise stated. It must be borne in mind that many of the companies reporting to this State also operate in other states and their reports to this State include the figures for their entire business in other states as well as in this. The comments refer to matters up to the time of writing this report. Street surface and elevated railroads are referred to under their respective titles.

#### General Situation.

The gross earnings from operation of the steam surface railroad companies reporting to this State for the year ending June 30, 1905, were \$348,813,233.45; the gross earnings from operation for the year ending June 30, 1904, were \$334,434,456.34; an increase in gross earnings from operation in 1905 over 1904 of \$14,378,777.11. The increase in gross earnings from operation in 1904 over 1903 was \$12,883,886.74. Operating expenses in 1905 were \$247,922,018.43; operating expenses in 1904 were \$240,186,437.37; an increase in 1905 over 1904 of \$7,735,581.06. In 1904 operating expenses increased over operating expenses in 1903, \$13,195,357.76, which over-balanced the increase in gross earnings from operation in 1904 over 1903. Net earnings from operation in 1905 were \$100,891,215.02; net earnings from operation in 1904 were \$94,248,018.97; an increase in net earnings from operation of \$6,643,196.05. Net earnings from

operation in 1904 were \$311,471.02 less than in 1903. The percentage of operating expenses to gross earnings from operation decreased .75 per cent., compared with 1904; in 1904 this percentage increased 1.23 per cent. over 1903. It will thus be seen that the increase in percentage of operating expenses to gross earnings from operation, which has been steady since 1900, has this year changed.

Earnings per passenger per mile decreased and expenses per passenger per mile increased, making the profit per passenger per mile .042 cents less than in 1904; in 1904 profit per passenger per mile decreased .02 cents, compared with 1903. The earnings per passenger train mile increased, as did the expenses also, leaving the profit per passenger train mile 2 cents less than in 1904. Earnings per ton of freight per mile decreased .01 cents, expenses decreased .02 cents, leaving the profit increased .01 cents, compared with 1904, this profit coming from decrease in expenses. Earnings per freight train mile increased 10 cents, expenses increased one cent, leaving the profit increased 9 cents. The distribution of operating expenses between passengers and freight is the result of estimates made by the companies. In 1905 income from other sources than operation was \$20,428,782.64; in 1904 it was \$18,965,293.10. In 1905 the interest paid and accrued was \$43,579,974.50; in 1904, \$41,744,668.08. In 1905 the taxes paid and accrued were \$12,353,402.92; in 1904, \$11,829,316.53. In 1905 the dividends declared were \$32,066,181.13; in 1904, \$30,858,072.10. The percentage of dividends declared to capital stock was 3.51 in 1905; in 1904 it was 3.42. The total capital stock of the companies in 1905 was \$913,489,998.63; in 1904, \$902,279,698.63. The percentage of interest paid and accrued to funded debt was 4.17 in 1905; in 1904, 4.26. The total funded debt of the companies in 1905 was \$1,044,987,719.39; in 1904, \$980,033,992.75.

During the three months ending September 30, 1905, compared with the corresponding months in 1904 (of the principal companies), there is an increase in gross earnings from operation of \$7,052,932.94; an increase in operating expenses of \$6,321,817.99; and an increase in net earnings from operation of \$731,114.95.

Following will be found a table showing gross earnings from operation, and mileage, reported by the companies reporting to this State in each year from 1896 to 1905, inclusive. Since 1902 the reports of no large companies not theretofore reporting are included.

Gross earnings from operation.		Miles of road operated.
1896	\$210,089,592 75.....	15,238.01
1897	204,252,615 41.....	15,188.28
1898	214,050,214 51.....	15,180.89
1899	220,027,722 90.....	15,280.13
1900	247,089,779 28.....	15,664.23
1901	276,676,101 88.....	17,518.05
1902	293,347,453 06.....	17,770 54
1903	321,550,569 60.....	17,956 09
1904	334,434,456 34.....	18,075.40
1905	348,813,233 45.....	18,325.46

The following table shows increases and decreases in the steam railroad mileage in the State during the year:

*Increases.*

Erie and Central New York.....	.08
Lake Champlain and Moriah.....	1.82
Lehigh and Lake Erie.....	2.94
Lehigh Valley Railway.....	.08
New England.....	.09
Port Chester Terminal.....	.50
Rome, Watertown & Ogdensburg.....	.45
	<hr/> 5.96

*Decreases.*

Buffalo, Rochester & Pittsburgh.....	.11
Erie.....	.85
Mohawk and Malone.....	.04
New York and Mahopac.....	.03
Oswego and Rome.....	.45
	<hr/> 1.48

Net increase.....	4.48
-------------------	------

The above does not include the Buffalo and Susquehanna Railway which is constructing from Wellsville to Buffalo, a distance of about 86 miles; the Erie and Jersey Railroad which is being constructed as a cut-off for the Erie Railroad from Highland Mills to Guymard in Orange county, a distance of about 42 miles; the Genesee River Railroad which is being constructed as a cut-off for the Erie Railroad from near Portage, Livingston county, to near Cuba, Allegany county, a distance of about 34 miles; nor the Lowville and Beaver River Railroad which is about finished from Lowville to Croghan in Lewis county, a distance of about ten miles.

The companies in the hands of receivers are the Pittsburg, Shawmut and Northern, the Dansville and Mount Morris and the Poughkeepsie and Eastern.

The average number of persons, including officials, employed by the companies during the year was 227,117; in 1904, 219,286. The average number resident of this State in 1905 was 105,041; in 1904, 101,259. The total amount paid them in 1905 was \$144,448,794.43; in 1904, \$140,458,496.51. The percentage of gross earnings from operation paid in salaries and wages in 1905 was 41.41.

#### **Summary of Business for the Year of Steam Surface Railroads.**

The reports of steam surface railroad companies for the year ending June 30, 1905, with tables compiled therefrom, will be found in the second volume of this report. Following this title will be found a table giving statistics of cost of road and equipment, earnings, etc. Following the table will be found percentages of operating expenses.

## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STEAM SURFACE RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.		
<i>Assets.</i>				
Cost of road and equipment.....	\$1,561,330,371 09	\$1,604,005,329 62		
Permanent investments, supplies, cash and other assets.....	561,069,228 65	608,455,554 61		
Total assets.....	\$2,122,399,599 74	\$2,212,460,884 23		
<i>Liabilities.</i>				
Capital stock issued.....	\$902,279,698 63	\$913,489,998 63		
Funded debt issued.....	980,033,992 75	1,044,987,719 39		
Other liabilities.....	151,368,330 71	161,710,376 62		
Total liabilities.....	\$2,033,682,022 09	\$2,120,188,094 64		
Excess of assets over liabilities....	\$88,717,577 65	\$92,272,789 59		
<i>Earnings from Operation.</i>				
	PASSENGER.	FREIGHT.	PASSENGER.	FREIGHT.
From passenger transportation.....	\$88,764,115 59		\$91,381,058 86	
From freight transportation.....		\$219,597,688 88		\$229,745,419 20
From mail transportation.....	7,039,675 54		7,066,020 56	
From express transportation.....	9,153,546 58		9,823,244 39	
From miscellaneous sources.....	4,045,893 77	5,840,585 98	4,167,630 52	6,609,880 42
Gross earnings from operation.....	\$108,996,231 48	\$225,438,224 86	\$112,457,958 83	\$236,355,279 62
Operating expenses.....	91,761,795 12	148,424,642 25	96,703,980 25	151,218,038 18
Net earnings from operation.....	\$17,234,436 36	\$77,013,582 61	\$15,753,978 58	\$85,137,241 44
<i>Operating Expenses.</i>				
Maintenance of way and struc- tures.....	\$42,418,903 57		\$43,893,512 18	
Maintenance of equipment.....	46,324,236 70		49,727,179 68	
Conducting transportation.....	143,670,262 71		146,079,530 18	
General expenses.....	7,773,034 39		8,221,796 39	
Allotted to passengers.....	\$91,761,795 12		\$96,703,980 25	
Allotted to freight.....	148,424,642 25		151,218,038 18	
Total operating expenses....	\$240,186,437 37		\$247,922,018 43	
<i>Income Account.</i>				
Gross earnings from operation, as above.....	\$334,434,456 34		\$348,813,233 45	
Less operating expenses.....	240,186,437 37		247,922,018 43	
Net earnings from operation..	\$94,248,018 97		\$100,891,215 02	
Add income from other sources...	18,965,293 10		20,428,782 64	
Gross income from all sources.	\$113,213,312 07		\$121,319,997 66	
<i>Deductions from Gross Income.</i>				
Interest*.....	\$31,766,432 54		\$34,097,712 23	
Rentals of leased lines.....	30,372,002 16		30,591,843 88	
Taxes.....	11,829,316 53		12,353,402 92	
Miscellaneous.....	5,303,213 46		5,490,266 35	
Total deductions from gross income.....	\$79,270,964 69		\$82,533,225 38	
Net income from all sources...	\$33,942,347 38		\$38,786,772 28	

## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STEAM SURFACE RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Payments from Net Income.</i>		
Dividends.....	\$23,327,746 82	\$24,289,419 00
Miscellaneous.....		316,287 39
Total payments from net income.....	\$23,327,746 82	\$24,605,706 39
Surplus for year.....	\$10,614,600 56	\$14,181,065 89
<i>Mileage.</i>		
Miles of road built and operated, main line.....	18,075.40	18,325.46
Miles of additional track.....	5,908.57	6,151.25
Miles of sidings.....	10,158.19	10,528.37
Total miles of track.....	34,142.16	35,005.08
Miles of road in New York State.....	8,249.69	8,254.18
Miles of track in New York State.....	15,571.31	15,949.61
<i>Equipment.</i>		
Locomotives, 10 drivers.....	6	9
Locomotives, 8 drivers.....	2,131	2,379
Locomotives, 6 drivers.....	3,377	3,611
Locomotives, 4 drivers.....	2,863	3,656
Locomotives, inspection.....	12	13
Locomotives, electric.....	1	2
Total number of locomotives.....	8,390	9,670
Cars, sleeping, parlor, dining, buffet, etc....	351	390
Cars, first-class passenger.....	5,643	5,473
Cars, second-class passenger.....	512	489
Cars, combination passenger and baggage....	1,216	1,236
Cars, baggage, mail and express.....	2,293	2,341
Cars, electric motors.....	204	209
Total number of cars for passenger traffic.....	10,219	10,138
Total number of cars for freight traffic....	290,898	292,113

† Used by lessors as follows (see Table D)

	June 30, 1904.	June 30, 1905.
Interest.....	\$9,978,235 54	\$9,482,262 27
Dividends.....	7,530,325 28	7,776,762 13
Not designated and paid outside lines.....	12,863,441 84	13,332,819 48
Total rental of leased lines.....	\$30,372,002 16	\$30,591,843 88
* Total interest as per above table and note...	\$41,744,668 08	\$43,579,974 50
† Dividends as per above table.....	\$23,327,746 82	\$24,289,419 00
Portion of rentals of leased lines paid in dividends by lessor.....	7,530,325 28	7,776,762 13
Total dividends as per above table and note...	\$30,858,072 10	\$32,066,181 13
† Taxes paid in State of New York.....	\$4,670,807 72	\$4,941,773 24
Taxes paid outside of State of New York.....	7,158,508 81	7,411,629 68
Total.....	\$11,829,316 53	\$12,353,402 92

## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STEAM SURFACE RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Traffic and Mileage Statistics.</i>		
Number of passengers carried in State of New York.....	94,522,477	97,060,279
Number of passengers carried, entire lines.....	225,782,428	229,889,356
Number of passengers carried one mile....	5,055,683,438	5,261,298,854
Number of tons of freight carried in State of New York.....	134,031,718	142,662,742
Number of tons of freight carried, entire lines.....	222,559,438	241,429,231
Number of tons of freight carried one mile.	30,871,774,989	32,822,854,252
Passenger train mileage.....	87,053,244	87,598,132
Freight train mileage.....	83,234,657	84,218,700
Mixed train mileage.....	2,960,960	2,878,138
All other train mileage*.....	42,558,886	42,582,491
Total train mileage.....	215,807,747	217,277,461
<i>Per passenger per mile:</i>		
Passenger earnings (cents)†.....	2.156	2.137
Passenger expenses (cents).....	1.815	1.838
Passenger profit (cents).....	.341	.299
<i>Per passenger train mile:‡</i>		
Passenger earnings†.....	\$1 21	\$1 24
Passenger expenses.....	1 02	1 07
Passenger profit.....	19	17
<i>Per ton of freight per mile:</i>		
Freight earnings (cents)§.....	0.731	0.721
Freight expenses (cents).....	0.481	0.461
Freight profit (cents).....	0.250	0.260
<i>Per freight train mile:‡</i>		
Freight earnings§.....	\$2 61	\$2 71
Freight expenses.....	1 72	1 73
Freight profit.....	89	98
<i>Per mile of road operated:</i>		
Passenger earnings†.....	\$6,030 08	\$6,136 70
Passenger expenses.....	5,076 61	5,277 02
Passenger profit.....	953 47	859 68
Freight earnings§.....	12,472 10	12,897 64

\*Includes switching and work train mileage.

†Including mail, express and miscellaneous earnings.

‡Computed on passenger and freight train mileage with mixed train mileage added.

§Including miscellaneous earnings.

## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STEAM SURFACE RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Per mile of road operated—Continued :</i>		
Freight expenses.....	\$8,211 40	\$8,251 80
Freight profit.....	4,260 70	4,645 84
Gross earnings from operation.....	18,502 18	19,034 35
Operating expenses.....	13,288 02	13,528 83
Net earnings from operation.....	5,214 16	5,505 52
Cost of maintenance of way and structures.....	2,346 77	2,395 22
Cost of maintenance of equipment.....	2,562 84	2,713 56
Cost of conducting transportation.....	7,948 38	7,971 40
General expenses.....	430 03	448 65
Average number of employees.....	12	13
Average number of passengers per train mile†.....	56	58
Average miles each passenger was carried..	22.40	22.88
Average number of tons of freight per train mile†.....	357.74	376.85
Average miles each ton was carried.....	138.71	135.95
Average number of employees during year.....	219,286	227,117
Average number of residents of this State..	101,259	105,041
Salaries and wages paid them (entire number).....	\$140,458,496 51	\$144,448,794 43
Percentage of net income to capital stock*	4.60	5.10
Percentage of dividends declared to capital stock.....	3.42	3.51
Percentage of gross income to cost of road and equipment.....	7.25	7.56
Percentage of operating expenses to gross earnings from operation.....	71.82	71.07
Percentage of passenger expenses to passenger earnings.....	84.19	86.00
Percentage of freight expenses to freight earnings.....	65.84	63.98

\*As the cost of the road and equipment, capital stock and debt of lessor companies are included with operating companies under those heads respectively, the income of such lessor companies should be included in any computations based on those accounts; therefore the percentage of net income to capital stock is computed on the following basis:

	June 30, 1904.	June 30, 1905.
Net income as herein above shown.....	\$33,942,347 38	\$38,786,772 28
Add portion of rentals used by lessors for dividends as before shown in note (dividends not being a fixed charge).....	7,530,325 28	7,776,762 13
Total net income of operating and lessor companies.....	\$41,472,672 66	\$46,563,534 41

†Including mixed train mileage.



**PERCENTAGE OF GROSS EARNINGS FROM OPERATION EXPENDED FOR  
OPERATING EXPENSES, DIVIDED.**

	For year ending June 30, 1904.	For year ending June 30, 1905.
Maintenance of way and structures.....	12.68	12.59
Maintenance of equipment.....	18.85	14.26
Conducting transportation.....	42.96	41.87
General expenses.....	2.33	2.35
	71.82	71.07

**PERCENTAGES OF SUBDIVISIONS OF OPERATING EXPENSES TO TOTAL  
OPERATING EXPENSES.**

	1904.	1905.
Maintenance of way and structures.....	17.67	17.70
Maintenance of equipment.....	19.28	20.06
Conducting transportation.....	59.81	58.92
General expenses.....	3.24	3.32
	100.	100.

**PERCENTAGES OF OPERATING EXPENSES TO GROSS EARNINGS FROM  
OPERATION FOR TEN YEARS:**

1896.....	69.52
1897.....	68.12
1898.....	68.47
1899.....	67.91
1900.....	67.27
1901.....	68.80
1902.....	69.80
1903.....	70.59
1904.....	71.82
1905.....	71.07

**Quarter Ending September 30, 1905.**

Following is a summary of the business done by the principal steam railroads of the State during the three months ending September 30, 1905, compared with the corresponding months in 1904:

COMPARISON of quarterly reports of principal steam railroads operating wholly or partly in New York State for the three months ending September 30, 1904, and September 30, 1905.

ROAD.	1904.			1905.		
	Gross earnings from operation.	Operating expenses.	Net earnings from operation.	Gross earnings from operation.	Operating expenses.	Net earnings from operation.
Boston and Maine.	\$9,908,851 73	\$6,715,993 23	\$3,192,858 50	\$10,449,587 45	\$7,165,666 45	\$3,283,921 00
Buffalo, Rochester and Pittsburgh.	2,119,489 35	1,238,083 90	881,405 45	2,370,206 09	1,267,233 49	1,102,972 60
Delaware and Hudson.	3,045,751 93	1,715,393 76	1,330,358 17	3,314,197 68	1,956,449 49	1,357,748 19
Delaware, Lackawanna and Western*.	2,935,530 85	1,431,095 61	1,504,435 24	2,876,523 77	1,489,235 56	1,387,288 21
Dunkirk, Allegheny Valley and Pittsburgh.	92,956 62	54,608 70	38,348 92	90,034 37	58,644 64	31,389 73
Elmira and Lake Ontario.	267,015 76	236,001 86	31,013 90	253,993 21	239,018 98	14,974 23
Elmira and Williamson.	402,078 16	310,279 10	91,799 06	317,917 72	272,762 91	45,154 81
Erie.	11,108,453 29	6,938,377 36	4,170,075 93	11,780,069 01	7,588,692 29	4,191,376 72
Lake Shore and Michigan Southern.	8,776,979 79	6,292,833 69	2,484,146 10	10,069,253 17	8,255,646 18	1,813,606 99
Lehigh Valley*.	2,446,011 21	1,850,714 51	595,296 70	2,639,029 74	1,733,957 20	895,072 54
Long Island.	2,497,481 63	1,563,332 51	934,149 12	2,617,204 66	1,795,703 77	821,500 89
New Jersey and New York.	119,128 19	78,490 82	40,637 37	123,555 31	100,655 85	22,899 46
New York Central and Hudson River.	20,461,960 64	13,980,926 60	6,481,034 04	22,729,159 12	15,962,707 13	6,766,451 99
New York, Chicago and St. Louis.	1,995,834 59	1,491,085 41	504,749 18	2,189,869 19	1,629,301 68	560,567 51
New York, New Haven and Hartford.	12,989,029 23	8,721,794 98	4,267,234 25	13,849,515 25	8,993,930 06	4,855,585 19
New York, Ontario and Western.	1,943,825 00	1,153,111 00	790,714 00	2,147,457 00	1,390,833 00	756,624 00
New York and Ottawa.	1,47,463 88	35,539 14	11,924 74	† 737,300 42	497,531 07	239,769 35
Rutland.	720,734 26	416,845 20	303,889 06	† 65,563 90	60,260 54	5,303 36
St. Lawrence and Adirondack.	74,394 37	39,117 38	35,276 99	181,695 58	134,629 04	47,067 54
Staten Island Railway.	61,346 87	49,530 31	11,816 56	359,905 35	203,636 93	156,268 42
Syracuse Island Rapid Transit.	172,972 98	92,121 27	80,851 71	1,804,001 91	1,348,000 12	456,001 79
Syracuse, Binghamton and New York.	331,395 43	216,004 14	115,391 29			
Western New York and Pennsylvania.	1,384,422 20	1,231,399 91	153,022 29			
	\$83,903,107 96	\$55,852,678 39	\$28,050,429 57	\$90,956,040 90	\$62,174,496 38	\$28,781,544 52

SUMMARY.			
Gross earnings from operation.....		1904.	1905.
Operating expenses.....		\$83,903,107 96	\$90,956,040 90
Net earnings from operation.....		55,852,678 39	62,174,496 38
Increase in gross earnings from operation in 1905.....			\$7,052,932 94
Increase in operating expenses in 1905.....			6,321,817 99
Increase in net earnings in 1905.....			\$731,114 95

\* Includes roads operated in this State only. † Included in New York Central and Hudson River in 1905 quarter

COMPARISON of quarterly reports of principal steam railroads operating wholly or partly in New York State for the three months ending September 30, 1904, and September 30, 1905.

d denotes deficiency.

ROAD.	1904.			1905.		
	*Total income.	†Total expenses	Net income.	*Total income.	†Total expenses.	Net income.
Boston and Maine.....	\$10,010,854 32	\$8,748,661 69	\$1,262,192 63	\$10,567,137 79	\$9,204,505 30	\$1,362,632 49
Buffalo, Road Haven and Pittsburgh.....	2,123,043 32	1,663,021 64	460,021 68	2,375,869 67	1,724,357 46	651,512 21
Delaware, Lackawanna, and Western†.....	3,045,530 83	2,452,778 49	592,752 34	3,215,197 68	2,703,280 38	511,917 30
Dunkirk, Allegheny Valley and Pittsburgh.....	2,935,530 83	2,044,809 26	890,721 57	2,876,523 77	2,107,215 18	769,308 59
Elmira and Lake Ontario.....	93,863 80	58,152 70	35,711 10	90,354 37	57,190 64	33,163 73
Elmira and Williamsport.....	267,015 76	257,230 26	9,785 50	255,932 22	257,983 25	d 3,861 03
Erie.....	402,038 74	355,339 98	46,698 76	317,917 72	314,190 48	3,727 24
Lake Shore and Michigan Southern.....	11,150,338 18	9,666,902 62	1,483,436 56	11,843,638 97	10,453,355 79	1,390,283 18
Lehigh Valley†.....	9,256,979 79	7,822,833 69	1,434,146 10	10,869,253 17	9,815,648 18	1,053,604 99
Long Island.....	2,446,011 21	2,122,277 01	323,734 20	2,629,029 74	2,007,819 70	621,210 04
New Jersey and New York.....	2,662,262 11	2,168,550 39	493,711 72	2,752,192 95	2,426,867 77	325,325 18
New York Central and Hudson River.....	120,567 46	93,838 32	26,729 14	124,987 67	116,202 10	8,785 57
New York, Chicago and St. Louis.....	22,547,221 53	19,466,223 67	3,080,997 86	24,856,125 56	21,641,396 63	3,214,728 93
New York, New Haven and Hartford.....	1,988,390 26	1,828,877 08	169,513 18	2,192,803 50	1,951,975 28	240,828 22
New York, Ontario and Western.....	13,123,516 61	10,830,230 74	2,293,285 87	13,937,881 14	11,326,778 86	2,611,102 28
New York and Ottawa.....	2,057,545 00	1,496,021 00	561,524 00	2,256,178 00	1,760,302 00	495,876 00
Rutland.....	47,463 88	42,639 14	4,824 74	\$.....	749,057 09	99,598 60
St. Lawrence and Adirondack.....	731,733 01	570,223 00	161,510 01	\$.....	649,458 49	82,274 52
Staten Island Railway.....	74,551 11	64,406 15	10,144 96	\$.....	68,409 29	2,889 04
Staten Island Rapid Transit.....	67,150 62	57,679 06	9,471 56	71,299 23	179,230 86	10,902 71
Syracuse, Binghamton and New York.....	185,663 40	138,052 76	47,610 64	190,133 57	250,094 43	109,810 92
Western New York and Pennsylvania.....	331,395 43	262,784 07	68,611 36	359,905 35	1,653,710 71	150,291 20
Western New York and Pennsylvania.....	1,384,422 20	1,516,456 04	d132,033 84	1,804,001 91	\$.....	\$.....
<b>TOTAL.....</b>	<b>\$87,063,850 51</b>	<b>\$73,722,988 76</b>	<b>\$13,340,861 75</b>	<b>\$94,437,121 07</b>	<b>\$80,704,960 88</b>	<b>\$13,732,160 39</b>

SUMMARY.

Income from all sources.....	1904.	1905.
Total expenditures.....	\$87,063,850 51	\$94,437,121 07
Net income.....	73,722,988 76	80,704,960 88
Increase in income from all sources in 1905.....	\$13,340,861 75	\$13,732,160 39
Increase in total expenditures in 1905.....	\$.....	\$6,373,770 56
Increase in net income in 1905.....	\$.....	\$7,981,971 92
Increase in net income in 1905.....	\$.....	\$391,798 64

\* Includes gross earnings and income from other sources than operation. † Includes operating expenses, all fixed charges and miscellaneous deductions. ‡ Includes roads operated in this State only. § Included in New York Central and Hudson River in 1905 quarter.

**Accidents on Steam Surface Railroads.**

The statement of accidents on steam surface railroads in this State which follows is for the year ending June 30, 1905, compared with the year ending June 30, 1904.

The total number of persons killed in 1905 was 903, injured 1,961; in 1904, killed, 952, injured, 2,399. These figures include persons not passengers or employees, as well as passengers and employees. Forty-nine less persons were killed and 438 less injured in 1905 than in 1904. No especially disastrous accident occurred during the year. No great disaster occurred in 1904, as none occurred in 1905, and while it is true that irrespective of such a disaster the statistics show that accidents will increase one year over a preceding year, and while 1906 compared with 1905 may show an increase, still in view of the larger number of trains being run and the increase in passengers carried and population, it is evident that improvements in railroad construction, equipment and operation are preventing accidents.

Fifteen passengers were killed and 265 injured in 1905, compared with 12 killed and 446 injured in 1904. In 1905, 2 passengers were killed in collisions, 11 while getting on or off trains in motion or through falling from train, engine or car, and 2 while on the track. In 1905, 104 passengers were injured in collisions, 44 in derailments, 44 while getting on or off trains in motion or falling from train, engine or car, 2 from striking a bridge, 5 in putting heads or arms out of windows or through missiles thrown, 28 through explosion of locomotive boilers, 14 from other train accidents, and 24 from other causes.

The following table shows the number of passengers and employees killed and injured in this State in each of the past five years:

	PASSENGERS.			EMPLOYEES.	
	Killed.	Injured.		Killed.	Injured.
1901.....	16	375	1901.....	250	766
1902.....	37	483	1902.....	251	1,001
1903.....	19	278	1903.....	322	1,122
1904.....	12	446	1904.....	329	1,587
1905.....	15	265	1905.....	336	1,344
Total.....	99	1,847		1,488	5,820
Average.....	20	369		298	1,164

The average for the past five years is 20 passengers killed and 369 injured yearly. This average is 5 more killed and 104 more injured than in 1905. The average for the five years for employees is 298 killed and 1,164 injured. This average is 38 less killed, and 180 less

injured than in 1905. The number of passengers carried in the State of New York by steam surface railroads during the year ending June 30, 1905, was 97,060,279; 1 passenger was killed for each 6,470,685 carried, and 1 injured for each 366,265 carried. In 1904, 1 passenger was killed for each 7,876,873 carried, and 1 injured for each 211,934 carried.

In 1905, 336 employees were killed and 1,344 injured; in 1904, 329 were killed and 1,587 injured. In 1905, 39 employees were killed and 201 injured through falling from train, engine or car; in 1904, 55 were killed and 205 injured from this cause. In 1905, 15 employees were killed and 183 injured in getting on or off trains in motion; in 1904, 21 were killed and 207 injured from this cause. In 1905, 13 employees were killed and 77 injured through striking low bridges, tunnels, etc.; in 1904, 9 were killed and 91 injured from this cause. In 1905, 19 employees were killed and 82 injured in coupling or uncoupling cars; in 1904, 16 were killed and 100 injured from this cause. It would seem that these coupling accidents in most cases should be avoidable. In 1905, 184 employees were killed and 126 injured through walking or being on track; in 1904, 156 were killed and 116 injured from this cause. In 1905, 3 employees were found dead on track; in 1904, 8. In 1905 no employees were killed at highway crossings protected by gates or flagmen, but 1 was injured; in 1904, 7 employees were killed and 2 injured at such crossings. In 1905 no employees were killed or injured at highway crossings not protected by gates or flagmen; in 1904 1 was killed at such a crossing. In 1905 no employees were killed, although 2 were injured, by catching feet in frogs or guard rails; in 1904, 4 were killed and 1 injured from this cause. In 1905, 6 employees were killed and 24 were injured in derailments; in 1904, 16 were killed and 65 injured in derailments. In 1905, 18 employees were killed and 22 injured in butting collisions; in 1904, 3 were killed and 15 injured in such collisions. In 1905, 1 employee was killed and none injured in collisions between trains and hand-cars; in 1904, 4 were killed and 2 injured in such collisions. In 1905, 17 employees were killed and 62 injured in rear collisions; in 1904, 9 were killed and 65 injured from this cause. In 1905, 8 employees were killed and 11 injured in locomotive boiler explosions; in 1904, 8 were killed and 10 injured from this cause. In 1905, 9 employees were killed and 131 injured in other train accidents; in 1904, 8 were killed and 100 injured in such accidents. In 1905, 2 employees were killed and 422 injured from other causes not above specified—these were mainly slight accidents; in 1904, 1 was killed and 605 injured from such causes. In 1905, 2 employees were killed and none

injured in casualties not caused by train, engine or car; in 1904, 3 were killed and 3 injured in such manner.

In compiling these statistics persons who are killed or injured, who are not passengers or employees, are classed as "others." The total number of "others" killed in 1905 was 552, injured, 352; in 1904, the number killed was 611, injured, 366. The number of "others" killed in 1905 while walking or being on track was 273, injured, 124; in 1904 the number killed was 319, injured, 129. In 1905, 115 "others" were found dead on track; in 1904, 136. In 1905, 40 "others" were killed and 67 injured in getting on or off trains in motion; in 1904, 27 were killed and 94 injured. In 1905, 18 "others" were killed and 22 injured by falling from train, engine or car; in 1904, 16 were killed and 15 injured. In 1905, 8 "others" were killed and 8 injured by striking low bridges, tunnels, etc.; in 1904, 6 were killed and 6 injured. In 1905, 1 "other" was killed in a derailment. In 1905, 1 "other" was killed and 11 injured in rear collisions between trains. In 1905, 11 "others" were injured at grade crossings of railroads—these latter being in street cars.

In 1905, 96 persons were killed and 76 persons (including 1 employee) were injured at street and highway grade crossings of steam railroads protected and unprotected by gates or flagmen; in 1904, 105 persons (including 8 employees) were killed and 84 persons (including 2 employees) were injured at such crossings. In 1905, 24 of these persons were killed and 12 injured (including 1 employee—a crossing flagman) at such crossings protected by gates or flagmen; in 1904, 39 (including 7 employees—6 of whom were crossing flagmen) were killed and 30 (including 2 employees) injured at such crossings protected by gates or flagmen. In 1905, 72 persons were killed and 64 injured at such crossings not protected by gates or flagmen; in 1904, 66 persons (including 1 employee) were killed and 54 injured at such crossings not protected by gates or flagmen.

In an effort to reduce the size of this volume (of which this pamphlet contains the advance sheets) this Board has determined not to print the special reports made by inspectors in relation to accidents. The usual investigations including those of many minor accidents, have been made by the inspectors and reports made and recommendations sent to the companies as in former years.

These accidents are reported to this Board by telegraph and by mail. Accidents in shops are not reported. The following is a table of accidents compiled from these reports, classified as to their causes. The classifications are those adopted by this Board from statements concerning each case. Accidents on street surface and elevated railroads are referred to later in this report.



### **The Grade Crossing Law.**

The Grade Crossing Law (which amends the Railroad Law, sections 60-69) provides as follows:

1. In section 60, that "all steam surface railroads, hereafter built except additional switches and sidings, must be so constructed as to avoid all public crossings at grade, whenever practicable so to do \* \* \* and the said board (of railroad commissioners) shall determine whether such crossings shall be under or over the proposed railroad, except where said board shall determine such method of crossing to be impracticable."

2. In section 61, that no new street, avenue or highway shall be constructed across a steam railroad except in a manner to be determined by this Board.

3. In section 62, a method for abolishing existing grade crossings of steam railroads.

The provisions of the act also apply to "all existing or future steam surface railroads, on which, after the passage of this act, electricity or some other agency than steam shall be substituted as a motive power."

The cost of building new steam railroads at grade or over or under the grade of streets, avenues or highways must be borne by the company. The cost of building new street, avenue or highway crossings at grade or over or under the grade of steam railroads must be borne, half by the company and half by the municipality. The cost of abolishing existing street, avenue or highway grade crossings of steam railroads must be borne, 50 per cent. by the company, 25 per cent. by the State and 25 per cent. by the municipal corporation.

The law also provides (in section 68) that "all steam railroads hereafter constructed across the tracks of any other railroad and any street surface railroad hereafter constructed across a steam railroad shall be above, below or at grade of such existing railroad as the board of railroad commissioners shall determine, and such board shall in such determination fix the proportion of expense of such crossing to be paid by each railroad."

Many crossings in Buffalo and some on the Long Island railroad and Brooklyn Heights electric railroad in Brooklyn have been changed from grade under special acts, which work is continuing and in the cost of which the State does not participate. On the Harlem River and Port Chester branch of the New York, New Haven and Hartford railroad a number of crossings are now being changed from grade without expense to the State or communities.



The Schenectady grade crossing work (in which the State participates) is well along toward completion, with the result that in about a year's time there will probably be no grade crossings of steam railroads in Schenectady.

The New York Central and Hudson River Railroad Company contemplates the elimination of all grade crossings of its Hudson River line from Croton to New York city and of its Harlem line from North White Plains to New York city. The State is asked to participate in the cost of this work. The Board has presented a special report to the Governor in this matter.

The appropriations made by the State to pay its one-quarter share of grade crossing eliminations are comparatively small, but a fair beginning has been made, and it is probable that larger appropriations will be made as soon as the finances of the State will permit.

Following will be found a statement of every determination (where a crossing was to be closed or changed from grade) under section 62 made by this Board, to the time of writing this report, except as to one crossing in the town of Alfred, Allegany county, which was closed in 1897, and one crossing in Binghamton, which was closed in 1898, both without expense to the State. This statement is divided by years, except that the determination made in 1898 are included under the title "1899." It will be seen that work has not been begun at a few of the crossings; that some determinations have been annulled; that three have been turned over to the attorney-general for his action because of failure of local authorities to acquire necessary land, and that the work at others of the crossings is proceeding. The width of bridges carrying the street or highway given is from center to center of trusses. It will also be seen from this statement that 151 grade crossings of steam railroads have either been changed from grade or the crossings closed. In 7 instances farm gates have been erected where an open crossing existed before. In 2 instances crossings have been closed to vehicles while being left open to foot passengers. Counting these farm crossings and pedestrian crossings the total number of crossings now closed or changed from grade under this statute is 160. In some other instances grade crossings have been closed and others and safer grade crossings differently located have been opened.

1899.

1. Under-crossing of the New York Central and Hudson River Railroad, in the village of Shortsville. This work is completed. The total cost was \$5,598.40. The State's proportion, which has been paid, was \$1,399.60. The under-crossing is 22 feet wide between abutments; clear headroom, 12 feet. The bridge carrying the railroad is of steel. (General Case No. 1914.)

2. One over-crossing and discontinuance of two other crossings at Brookview on the Boston and Albany Railroad. This work is completed. The total cost was \$24,459. The State's proportion, which has been paid, was \$6,114.75. The two bridges carrying the highway are of steel; one 73 feet 4 inches long, and the other 25 feet 1½ inches long; the first 27 feet 1 inch wide, and the other 26 feet 6 inches wide, with a sidewalk of 5 feet 9 inches. The approaches to the bridges are about 292 and 455 feet long on one side, and about 200 feet long on the other side and about 25 feet wide. The clearance from top of rail is 18 feet. One bridge carries the highway over the railroad and the other bridge, connecting with the first, carries it over another highway. (Grade crossing Case No. 4.)

3. Two grade crossings of the Mohawk and Malone branch of the New York Central and Hudson River Railroad, near the Lake Clear station, closed, and connecting piece of highway constructed. This work is completed. The total cost was \$353.53. The State's proportion, which has been paid, was \$88.38. (Grade Crossing Case No. 13.)

4. Three grade crossings of the New York, Ontario and Western Railway, near the Solsville station on said railway, closed. This work is completed. New pieces of highway were constructed. The total cost was \$4,300.66. The State's proportion, which has been paid, was \$1,075.16. (Grade Crossing Case No. 8.)

5. Closing of two grade crossings of the New York, Ontario and Western Railway, at Liberty, and the construction of a bridge over the railway. This work is completed. The total cost was \$3,774.78. The State's proportion, which has been paid, was \$943.69. The bridge is wood, 102 feet long and 17 feet wide. New pieces of highway were also constructed. (Grade Crossing Case No. 2.)

6. Changing the Bridge street crossing of the New York Central and Hudson River Railroad in the village of St. Johnsville, from grade to an over-crossing. This work is completed. The total cost was \$31,246.29. The State's proportion, which has been paid, was \$7,811.57. The bridge over the tracks (steel) is 122 feet long and 25 feet wide, with one sidewalk 5 feet wide. Clear height above rail, 21 feet. The approaches are 24 feet wide, and, on one side, are about 240 feet long and on the other side about 575 and 480 feet long. The north approach is partially steel and partially fill retained by walls; the steel portion is 120 feet long, and the filled portion about 120 feet long. The south approaches are fills retained by side walls. (Grade Crossing Case No. 15.)

7. Closing of the lower Meekerville road grade crossing of the Mohawk and Malone branch of the New York Central and Hudson River Railroad, in the town of Forestport, Oneida county. This crossing has been closed and a new piece of highway constructed, connecting with the Upper Meekerville road grade crossing of the railroad. The total cost was \$1,039.66. The State's proportion, which has been paid, was \$259.91. (Grade Crossing Case No. 14.)

8. Closing of a crossing of the New York Central and Hudson River Railroad, in the town of Glenville, Schenectady county known as Rector's crossing, and the construction of a new piece of highway connecting with an existing grade crossing which is protected by gates. This work is completed. The total cost was \$1,357.01. The State's proportion, which has been paid, was \$339.25. (Grade crossing Case No. 11.)

9. Closing of two grade crossings of the New York, Ontario and Western Railway known as the Roots and Milk Station Crossings, at Guilford, and the construction of a bridge and connecting pieces of highway. This work is completed. The (steel) bridge (which is across the outlet of Guilford lake) is 96 feet long and 16 feet wide. The total cost was \$7,096.26. The State's proportion, which has been paid, was \$1,774.06. Since this payment a further sum of \$600 was paid for land damages, of which amount the State paid its proportion, viz., \$150. (Grade Crossing Case No. 9.)

10. Changing the Ridge road grade crossing of the Buffalo, Rochester and Pittsburgh Railway, in the town of West Seneca, Erie county, from grade to an overhead crossing. This work is completed. The bridge (steel) is 35½ feet long and 40½ feet wide; clear headroom, 21 feet. The total cost was \$13,439.86. The State's proportion, which has been paid, was \$3,359.96. (Grade Crossing Case No. 6.)

11. Changing the Jamestown street grade crossing of the Erie Railroad, in the village of Randolph, Cattaraugus county, to an under-crossing, and closing

the Fifth avenue grade crossing of the railroad and diverting the travel therefrom by the construction of a new piece of highway to the Jamestown street under-crossing. This work is completed. The under-crossing at Jamestown street is 30 feet wide between abutments. The clear headroom is 12 feet. The bridge carrying the railroad is of steel. The connecting piece of highway is 50 feet wide and 625 feet long. The total cost was \$13,551.28. The State's proportion, which has been paid, was \$3,387.82. (Grade Crossing Case No. 17.)

12. Changing the Ireland road crossing of the Erie Railroad, in the town of Randolph, Cattaraugus county, from a grade crossing to an under-crossing. This work is completed. The under-crossing is 24 feet wide between abutments. The clear headroom is 12 feet. The bridge carrying the railroad is of steel. The total cost was \$5,051.51. The State's proportion, which has been paid, was \$1,262.88. (Grade Crossing Case No. 16.)

13. Changing the Woodlawn avenue grade crossing of the Erie Railroad, in the city of Elmira, to an under-crossing, and closing the Reformatory street crossing and connecting it, by the construction of a new piece of street, with the under-crossing at Woodlawn avenue. This work is completed. The under-crossing is 50 feet wide between abutments, with two sidewalks each 10 feet wide. The clear headroom is 12 feet. The bridge carrying the railroad is of steel. The highway connecting the streets is 50 feet wide. The total cost was \$23,687.65. The State's proportion, which has been paid, was \$5,921.91. (Grade Crossings Cases Nos. 22 and 31.)

14. Changing the Crosby road grade crossing of the Western New York and Pennsylvania Railway, in the town of Holland, Erie county, from grade to an over-grade crossing. This work is completed. The total cost was \$2,297.09. The State's proportion, which has been paid, was \$574.27. The bridge is of steel, 87 feet 2 inches long and 16 feet wide. The approaches are 18 feet wide, and on one side are about 150 feet long and on the other side about 250 feet long. The clearance from top of rail is 20 feet. (Grade Crossing Case No. 24.)

15. Closing of two grade crossings of the Buffalo, Rochester and Pittsburgh Railway, near its station known as Hardy's or Pike, in Wyoming county, the highways being connected and carried over the railway by means of one bridge. This work is completed. The total cost was \$5,417.25. The State's proportion, which has been paid, was \$1,354.31. The bridge is of steel, 100 feet long and 20 feet wide. The approaches are 20 feet wide, and on one side are about 150 feet long and on the other side about 550 and 175 feet long. The clearance from top of rail is 20 feet 6 inches. (Grade Crossing Case No. 34.)

16. Closing of a grade crossing of the Buffalo, Rochester and Pittsburgh Railway by a highway known as the Guthrie road, near Mumford station on said railway, in Monroe county, and diverting the travel to an existing grade crossing. This work involved the building of a connecting piece of highway. It is completed. The total cost was \$732.57. The State's proportion, which has been paid, was \$183.14. (Grade Crossing Case No. 37.)

17. Changing the LeRoy and Roanoke road highway grade crossing of the Buffalo, Rochester and Pittsburgh Railway, at a point known as Haskins crossing, near LeRoy station, from grade to an overhead crossing. This work is completed. The total cost was \$8,375.64. The State's proportion, which has been paid, was \$2,093.91. The bridge is of steel, 100 feet long and 20 feet wide. The approaches are about 220 feet long on one side and about 200 feet long on the other side, and 20 feet wide. The clearance from top of rail is 20 feet 6 inches. (Grade Crossing Case No. 30.)

18. Closing of four grade crossings of the Buffalo, Rochester and Pittsburgh Railway, in the town of Colden, Erie county, and the construction of a new piece of highway. This work is completed. The total cost was \$8,592.48. The State's proportion, which has been paid, was \$2,148.12. (Grade Crossing Case No. 28.)

19. Closing of two grade crossings of the Dunkirk, Allegheny Valley and Pittsburgh Railroad, known as the Tracey and Lawson crossings, in the town of Carroll, Chautauqua county. The local authorities would not acquire the necessary land, and on February 5, 1903, this Board by order annulled the determination in this matter. (Grade Crossing Case No. 32.)

20. Changing of two grade crossings of the New York Central and Hudson River Railroad by Spencer street and Livingston avenue, in the city of Albany, to under-crossings. This work is completed. The total cost was \$115,600.17.

The State's proportion, which has been paid, was \$28,900.04. The Spencer street crossing is 50 feet wide between abutments; clear headroom, 12 feet. The Livingston avenue crossing is 67 feet wide between abutments; clear headroom, 12 feet. The bridges carrying the railroad are of steel. (Grade Crossing Case No. 3.)

21. Closing of the Division avenue grade crossing of the Long Island Railroad, in the town of Brookhaven, Suffolk county. This work is completed, a connecting piece of highway built to another grade crossing protected by gates, and the Division avenue crossing closed. The total cost was \$4,202.57. The State's proportion, which has been paid, was \$1,050.64. (Grade Crossing Case No. 42.)

22. Closing of a grade crossing of the Long Island Railroad by Smith's road, in the town of Hempstead, Nassau county. This crossing has not been closed, the municipal corporation not having acquired the necessary land. The Board has turned the matter over to the Attorney-General. (Grade Crossing Case No. 88.)

23. Closing of the Atlantic avenue grade crossing of the Long Island Railroad in Arverne, New York city. This crossing has been made a private crossing without expense to the State. (Grade Crossing Case No. 100.)

24. Closing of a crossing of the Long Island Railroad by Overton avenue, in the town of Islip, Suffolk county. This crossing has been made a farm crossing only, although the petition, under section 62 of the Railroad Law, was denied. (Grade Crossing Case No. 51.)

25. Changing the Trotting Course Lane grade crossing of the New York and Rockaway Railroad, in ward 2, borough of Queens, New York city, from grade to an over-crossing. The local authorities would not acquire the necessary land, and on February 5, 1903, this Board by order, annulled the determination in this matter. (Grade Crossing Case No. 53.)

26. Closing of a grade crossing of the Long Island Railroad at a point known as Hyde's crossing, in the town of Islip, Suffolk county. This crossing has been made a farm crossing only, although the petition, under section 62 of the Railroad Law, was denied. (Grade Crossing Case No. 52.)

27. Closing of a grade crossing of the Long Island Railroad by Jones avenue, near the Bellmore station on said railroad. This crossing has been closed, without expense to the State. (Grade Crossing Case No. 91.)

28. Closing of a grade crossing of the Long Island Railroad by a highway known as the Swamp road, in the town of Hempstead, Nassau county. This crossing has been closed and a new piece of highway constructed to another crossing at grade of the railroad, without expense to the State. (Grade Crossing Case No. 97.)

29. Changing the Abbott road grade crossing of the Buffalo, Rochester and Pittsburgh Railway, near its Windom station, Erie county, to an under-crossing. This work is completed. The total cost was \$13,386.23. The State's proportion, which has been paid, was \$3,346.56. The crossing is 31 feet wide between abutments; clear headroom, 13 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 108.)

30. Closing of a grade crossing of the Delaware, Lackawanna and Western Railroad by the Mount Morris road, in the town of Leicester, Livingston county, the travel thereon being diverted to an existing under-crossing by the construction of new pieces of highway. This work is completed. The total cost was \$946.52. The State's proportion, which has been paid, was \$236.63. (Grade Crossing Case No. 41.)

31. Changing the Bevier street (Binghamton) grade crossings of the Syracuse, Binghamton and New York Railroad and the Albany and Susquehanna Railroad to under-crossings. These under-crossings are completed. The one under the Albany and Susquehanna Railroad is 29 feet 6 inches wide between abutments, and the overhead clearance is 13 feet. The one under the Syracuse, Binghamton, and New York Railroad is 30 feet wide between abutments, and the overhead clearance is 13 feet 6 inches. The total cost of the one under the Albany and Susquehanna was \$7,977.56. The State's proportion, which has been paid, was \$1,994.39. The total cost of the other was \$10,973.89. The State's proportion, which has been paid, was \$2,743.47. The bridges carrying the railroads are of steel. (Grade Crossing Case No. 116.)

32. Closing of a grade crossing of the Long Island Railroad, in the town of Hempstead, Nassau county, by a highway known as Lafayette place. This

crossing has been closed, without expense to the State. (Grade Crossing Case No. 95.)

33. Changing the Buell street grade crossing of the New York Central and Hudson River Railroad to an overhead crossing, in the town of Newstead, Erie county. This work is completed. The total cost was \$6,152.88. The State's proportion, which has been paid, was \$1,538.22. The over-crossing (which is of wood) is 257 feet 2 inches long and 16 feet wide. The approaches are 80 feet long on one side and 240 feet and 200 feet long on the other side, and 20 feet wide. The clearance from top of rail is 21 feet. (Grade Crossing Case No. 40.)

34. Changing a grade crossing to an under-crossing on the Fitchburg Railroad (leased to and operated by the Boston and Maine Railroad), at Melrose, Rensselaer county. The company appealed to the courts from the determination of the Board that the under-crossing should be constructed, and the Board's determination was confirmed by the Court of Appeals. The under-crossing is constructed and in use, but the settlement of expense has not yet been made. It is 30 feet wide between abutments and the overhead clearance is 13 feet. The drainage at this under-crossing is to be changed. (Grade Crossing Case No. 1.)

35. Changing the Hastings cross-road grade crossing of the Western New York and Pennsylvania Railway, in the town of Olean, Cattaraugus county, to an overhead crossing. This work is completed. The total cost was \$4,617.74. The State's proportion, which has been paid, was \$1,154.43. The bridge (of steel) is 85 feet 2 inches long and 16 feet wide. The approaches are about 250 feet long on one side and about 165 feet long on the other side, and 18 feet wide. The clearance from the top of rail is 20 feet 2 inches. (Grade crossing Case No. 19.)

36. Town board of the town of Bethlehem, Albany county. This was a case where the Board decided that an existing grade crossing of the West shore Railroad should be closed and discontinued, and the travel thereon diverted to a new grade crossing of said railroad, by means of a connecting piece of highway. This work has been completed, and the old crossing is closed and the new one in use. No expense to the State. Access to the lands of Spencer S. Merchant was provided. (Grade Crossing Case No. 129.)

37. Changing the Chenango street (Binghamton) grade crossing of the Erie Railroad and the Delaware, Lackawanna and Western Railroad from grade to an over-crossing. The viaduct (of steel) is completed. The total cost was \$186,962.66. The State's proportion, which has been paid, was \$46,740.66. Since this payment a further sum of \$2,011.38 was paid for land damages, of which amount the State paid its proportion, viz., \$502.84. The steel portion is 473 feet 8 3-16 inches long and 50 feet wide, with two sidewalks 8 feet wide and with a plaza at the station of the Erie Railroad. The approaches are 118 feet 6 inches long and 50 feet wide on one side, and 209 feet long and 50 feet wide on the other. The clearance above the top rail is variable, with a maximum of about 18 feet. (Grade Crossing Case No. 116.)

38. City of Cohoes. Changing the Ontario street grade crossing of the Delaware and Hudson Company's Railroad from grade to an over-crossing. The local authorities would not acquire the necessary land and on February 5, 1903, this Board, by order, annulled the determination in this matter. (Grade Crossing Case No. 20.)

39. Changing the Butter lane (Bridgehampton) grade crossing of the Long Island Railroad to an under-crossing. This work is completed. The under-crossing is 22 feet wide between abutments, and the overhead clearance is 11 feet. The bridge carrying the railroad is of steel. The total cost was \$5,218.13. The State's proportion, which has been paid, was \$1,304.53. (Grade Crossing Case No. 125.)

40. Changing the North Sea road grade crossing of the Long Island Railroad, in the village of Southampton, to an under-crossing. This work is completed. The under-crossing is 20 feet wide between abutments and the overhead clearance is 12 feet. The bridge carrying the railroad is of steel. The total cost was \$6,376.73. The State's proportion, which has been paid, was \$1,594.18. (Grade Crossing No. 142.)

41. Changing the High street grade crossing of the Erie Railroad, in the village of Attica, Wyoming county, to an under-crossing and closing the West Main street grade crossing of said railroad. This work is completed. The total cost was \$30,762.84. The State's proportion, which has been paid, was \$7,690.71. The under-crossing is 43 feet wide between abutments, and the overhead clear-

ance is 12 feet 6 inches. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 134.)

42. Closing two grade crossings of the Long Island Railroad, near its Kings Park station, and the construction of new pieces of highway. These crossings have been closed and the new pieces of highway constructed. The total cost was \$1,189.23. The State's proportion, which has been paid, was \$297.31. (Grade Crossing Case No. 132.)

#### 1900.

1. Over-crossing of the Lehigh and Hudson River Railroad near the Stone Bridge station of said railway. This work is completed. The total cost was \$7,820.02. The State's proportion, which has been paid, was \$1,955.67. The bridge is of steel, about 180 feet long, 16 feet wide and 20 feet in the clear above the top of the rail of the railroad track. The approaches to the bridge are 250 feet long and 20 feet wide on one side and 100 feet long and 20 feet wide on the other. (Grade Crossing Case No. 110.)

2. Under-crossing of the Erie Railroad and the New York, Susquehanna and Western Railroad, in the city of Middletown (two under-crossings). This work is completed. The total cost was \$29,802.34. The State's proportion which has been paid, was \$7,450.58. The Erie crossing is about 31 feet wide between abutments; clear headroom, 12½ feet. The other is 33 feet wide between abutments; clear headroom, 12½ feet. The bridges carrying the railroads are of steel. (Grade Crossing Case No. 113.)

3. Under-crossing of the Terminal Railway of Buffalo by the Abbott road highway, in the town of West Seneca, Erie county. This under-crossing is completed. The total cost was \$15,944.97. The State's proportion, which has been paid, was \$3,986.24. The under-crossing is 31 feet wide between abutments; clear headroom, 13 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 146.)

4. Under-crossing of the Buffalo, Rochester and Pittsburgh Railway near its Pavilion Center station, Genesee county. This under-crossing is completed. The total cost was \$5,871. The State's proportion, which has been paid, was \$1,467.94. The under-crossing is 20 feet wide between abutments; clear headroom, 12 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 131.)

5. Closing of the East street crossing of the New York Central and Hudson River Railroad, in the village of Fonda. The crossing is closed, without expense to the State. As stated in prior annual reports, the village has appealed to the courts from the determination of the Board, and several notices of proposed suits for damages by property owners have been filed with the Board, but at the time of writing this report no progress with these suits or with appeal has been made, so far as the Board is aware. (Grade Crossing Case No. 139.)

6. Closing of four highway grade crossings of the Ulster and Delaware Railroad at points at or near Browns' station on said railroad, the travel to be diverted by relocation of the highways to a new grade crossing at a point near the railroad station. This work is completed. The total cost was \$3,978.73. The State's proportion, which has been paid, was \$994.68. (Grade Crossing Case No. 148.)

7. Closing of two highway grade crossings of the Ulster and Delaware Railroad, about half a mile east of the West Hurley station on said railroad, the travel thereon to be diverted by the construction of new pieces of highway to an existing over-crossing of the railroad (a new bridge to be built at that point), and to an over-crossing of the railroad to be constructed. The town would not acquire the necessary land. During 1903 the company proposed to construct a new piece of highway (without expense to the State or town), and thus avoid crossing the railroad at the two grade crossings, the crossings to be closed; to this, the Board informed the company, it had no objection. This new piece of highway has not been constructed, and the determination has been annulled by this Board, the annulment determination being printed in this volume. (Grade Crossing Case No. 150.)

8. Closing of two highway grade crossings of the Ulster and Delaware Railroad, known as McKelvey's crossings, between the West Hurley and Olive Branch stations on said railroad, the travel thereon to be diverted by the construction of new pieces of highway to an existing under-crossing of the railroad. These

crossings have been closed, and the pieces of highway constructed. The total cost was \$669.88. The State's proportion, which has been paid, was \$167.47. (Grade Crossing Case No. 151.)

9. Under-crossing of the Boston and Albany Railroad by Chatham street, in the town of Kinderhook, Columbia county. The Board determined that this crossing should be changed from grade to an under-crossing. The town appealed under the statute, and the determination was confirmed by the Court of Appeals. This work is completed. The under-crossing is 26 feet wide between abutments and the overhead clearance is 13 feet. The total cost (except as hereinafter stated) was \$26,965.39. The State's proportion of this cost, which has been paid, was \$6,741.35. The town of Kinderhook claims that certain expenditures made by it in legal proceedings should be included in the accounting and settlement, and it was agreed between the town and the company that the claim should be presented to a judge of the Supreme Court for adjudication. At the time of writing this report this particular claim has not been presented to this Board, but the State has paid its proportion, \$252.26, of the cost of defending a suit for damages. (Grade Crossing Case No. 160.)

10. Proceeding by this Board, under section 66 of the Railroad Law, resulting in the closing and discontinuance, except for foot passengers, of two grade crossings of the New York Central and Hudson River Railroad, in the town of Wappingers, Dutchess county, near the Low Point station, on said railroad without expense to the State. These two crossings are closed except for foot passengers. (Grade Crossing Case No. 164.)

11. Over-crossing of the New York, Chicago and St. Louis and the Western New York and Pennsylvania railroads by a highway known as the Overhead Bridge road, in the town of Evans, Erie county. The highway also crosses the Lake Shore and Michigan Southern Railway, nearby, by an overhead bridge. This work has been completed. The total cost was \$7,122.10. The State's proportion, which has been paid, was \$1,780.52. The bridge is of steel, about 90 feet long, 19 feet wide and 21 feet in the clear above the top of the rail of the railroad tracks. The approaches to the bridge are approximately 240 feet long on one side and 100 feet on the other, and are about 20 feet wide. (Grade Crossing Case No. 172.)

12. Under-crossing of the Northern Central Railway in the town of Southport, Chemung county, at a point known as Fenton's crossing. This under-crossing has been completed. The total cost was \$13,257.98. The State's proportion, which has been paid, was \$3,314.49. The under-crossing is 20 feet wide between abutments; clear headroom, 12 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 177.)

13. Closing of the Mill lane highway grade crossing of the Long Island Railroad, in the town of Oyster Bay, Nassau county. The Board determined that this crossing should be consolidated with another grade crossing near by, which has been done, without expense to the State. (Grade Crossing Case No. 43.)

14. Closing of the Willis Lane highway grade crossing of the Long Island Railroad near the Syosset station on said railroad. The local authorities would not acquire the necessary land, and on March 11, 1903, the Board, by order, annulled the determination in this matter. (Grade Crossing Case No. 44.)

15. Closing of the old Lawrence street crossing of the Long Island Railroad at a point about 580 feet west of the Bridge street station on said railroad, in Flushing. At the time of writing this report this crossing has not been closed, the local authorities not having taken action to acquire land that may be necessary to be acquired. The matter has been referred to the Attorney-General. (Grade Crossing Case No. 54.)

16. Closing of the Newbridge road highway grade crossing of the Long Island Railroad near the Hicksville station on said railroad. This crossing has been closed without expense to the State. (Grade Crossing Case No. 56.)

17. Closing of the Huntington road highway grade crossing of the Long Island Railroad west of the Farmingdale station on said railroad. This crossing has been closed without expense to the State. (Grade Crossing Case No. 63.)

18. Closing of the Oakview avenue grade crossing of the Long Island Railroad near the Farmingdale station on said railroad. This has been made a private crossing only, without expense to the State. (Grade Crossing Case No. 66.)

19. Changing the Van Vleck or Lakeside road highway grade crossing of the New York Central and Hudson River Railroad and the West Shore Railroad

(which are near together at the point in question), in the town of Geddes, Onondaga county, to one under-crossing. Plans, specifications and proposals of contractors for this work were approved by this Board, when the town board asked this Board to modify its determination in the matter. This Board gave a hearing as to the proposed modification, but the application for such modification was withdrawn. Subsequently the town board again asked the Board to modify the determination, which has been done. (See No. 5 under "1902," in this statement.) (Grade Crossing Case No. 174.)

20. Closing and discontinuance of the South Country (sometimes called, the North Country) road highway grade crossing of the Long Island Railroad in the town of Southampton, Suffolk county, and construction of a new piece of highway. This work is completed. The total cost was \$2,859.34. The State's proportion, which has been paid, was \$714.83. This amount also includes the cost of the closing of the next following named crossing. (Grade Crossing Case No. 202. See Grade Crossing Case No. 203 following.)

21. Closing and discontinuance of the Pine Neck road highway grade crossing of the Long Island Railroad, in the town of Southampton, Suffolk county, and construction of a new piece of highway. This work is completed. The total cost was \$2,859.34. The State's proportion, which has been paid, was \$714.83. This amount also includes the cost of closing of the preceding named crossing. (Grade Crossing Case No. 203. See Grade Crossing Case No. 202 preceding.)

22. Closing and discontinuance of the Lake View avenue grade crossing of the Long Island Railroad near the Springfield station on said railroad. The crossing has not been closed, as the necessary land for a connecting piece of highway has not been acquired by the local authorities. The matter has been referred to the Attorney-General. (Grade Crossing Case No. 191.)

23. Changing a highway grade crossing of The Delaware and Hudson Company's Railroad by the Delaware turnpike to an under-crossing, near the city of Albany. This work has not been done, as at a hearing on May 8, 1901, in relation to the plan for the proposed under-crossing, the application was withdrawn by the representatives of the town board—so far as it could be, a determination having been made—and the board decided not to proceed further in the matter. (Grade Crossing Case No. 265.)

24. Changing the Arsenal street grade crossing of the Rome, Watertown and Ogdensburg Railroad (operated by the New York Central and Hudson River Railroad Company), in the city of Watertown, to an over-crossing. This work is completed. The over-crossing (which is of steel) is about 129 feet long and 35 feet 4 inches wide. The approaches are about 246 feet long and 30 feet 8 inches wide on one side and about 449 feet long and 30 feet 8 inches wide on the other. The clearance from top of rail is 20 feet. The total cost was \$51,150.75. The State's proportion, which has been paid, was \$12,787.69. Sidewalks have been rebuilt at additional cost of which the State's proportion will not exceed \$150, which has not yet been paid. (Grade Crossing Case No. 173.)

25. Closing of the Crutcher's grade crossing of the Lehigh Valley Railroad, near the Locke station on said railroad, and changing the location of the highway (known as the Groton road) so that it crosses the railroad at grade at another and less dangerous point. This work has been done, the old crossing closed and the new one opened at grade, without expense to the State. (Grade Crossing Case No. 107.)

26. Changing the Cold Spring Valley road highway grade crossing of the Long Island Railroad, in the town of Huntington, Suffolk county, to an under-crossing. This work is completed, the under-crossing is 16 feet wide between abutments. The clear headroom is 12½ feet. The total cost was \$6,234.87. The State's proportion, which has been paid, was \$1,558.72. (Grade Crossing Case No. 47.)

27. Changing the East Jamesport lane highway grade crossing of the Long Island Railroad, near the Jamesport station on said railroad, to an under-crossing and the construction of a connecting piece of highway. This work is completed. The total cost was \$11,632.48. The State's proportion, which has been paid, was \$2,908.12. The under-crossing is 20 feet wide between abutments; clear headroom 12 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 80.)

28. Closing and discontinuance of three highways grade crossings of the Long Island Railroad, one by a highway known as the Old Country or Blind road,



one by a highway known as Doris road or Old Country road, and one by a highway known as Raynor avenue or Griffin road, all in the town of Riverhead, Suffolk county, the Raynor avenue crossing being made an under-crossing and connecting pieces of highway constructed to it. This work is completed. The total cost was \$6,424.95. The State's proportion, which has been paid, was \$1,606.24. The under-crossing is 20 feet wide between abutments; clear headroom 12 feet. The bridge carrying the railroad is of steel. (Grade Crossing Cases Nos. 180, 181 and 182.)

29. Changing the Blue Point avenue grade crossing of the Long Island Railroad to an under-crossing, in the town of Brookhaven, Suffolk county. This work is completed. The total cost was \$11,066.55. The State's proportion, which has been paid, was \$2,766.64. The under-crossing is 20 feet wide between abutments; 12 feet clear headroom. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 205.)

30. Changing the Gravel Hill highway grade crossing of the Long Island Railroad, near the Good Ground station on said railroad, to an over-crossing, and closing the Red Creek and Canoe Place crossing. This work is completed. The total cost was \$4,898.77. The State's proportion, which has been paid, was \$1,224.69. The bridge, which is of steel, is about 90 feet long, 21.7 feet wide, and 16½ feet in the clear above the top rail of the railroad track. The approaches to the bridge are about 600 feet long on one side and 150 feet on the other. (Grade Crossing Case No. 157.)

31. Changing the Maloney's highway grade crossing of the New York, Ontario and Western Railway, near Mountindale station of said railway, to an under-crossing. This work is completed. The total cost was \$5,293.60. The State's proportion, which has been paid, was \$1,323.40. The under-crossing is 53 feet wide between abutments; 12 feet clear headroom. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 207.)

32. Closing and discontinuance of the Seneca turnpike highway grade crossing of the West Shore Railroad (leased to the New York Central and Hudson River Railroad Company) one-half mile east of the Oneida Castle station on said railroad, the travel to be diverted to an existing overhead crossing of said railroad known as Adams crossing. The Seneca turnpike crossing has been closed. The Board, on July 31, 1901, modified its determination in this matter so that a new steel bridge should be constructed at the Adams crossing. The new bridge is completed. The total cost of this work was \$8,652.51. The State's proportion, which has been paid, was \$2,163.13. (Grade Crossing Case No. 143.)

33. Closing and discontinuance of the Town road highway grade crossing of the New York Central and Hudson River Railroad, which highway forms a portion of the boundary line between the towns of De Witt and Manlius, in the county of Onondaga, the travel to be diverted to an over-head crossing of the railroad. This work is completed. No expense to the State. (Grade Crossing Case No. 288.)

34. Closing the Jersey avenue, Maltbie avenue and Park avenue grade crossings of the Erie Railroad, in the village of Suffern (a foot bridge is erected at Maltbie avenue), the travel thereon to be diverted to an under-crossing of the railroad which has been constructed at Chestnut street, and the extension of Ramapo avenue so that it crosses the railroad at an under-crossing heretofore existing. This work is completed. The total cost was \$44,893.62. The State's proportion, which has been paid, was \$11,223.40. The Chestnut street under-crossing is 36 feet wide between abutments; clear headroom 12 feet. (Grade Crossing Case No. 275.)

#### 1901.

1. Closing of a highway grade crossing of the Erie Railroad at Hale Eddy, the travel thereon to be diverted to a new crossing at grade of said railroad,

opened in the vicinity, by the construction of a new piece of highway. This work is completed. No portion of the expense of the change was borne by the State. (Grade Crossing Case No. 300.)

2. Closing of a crossing of the Geneva and Lyons branch of the New York Central and Hudson River Railroad, known as Boyce's crossing (town of Phelps, Ontario county), the travel thereon to be diverted by the construction of a new piece of highway to a new crossing at grade of said railway opened in the vicinity by the construction of a new piece of highway. This work is completed. No portion of the expense of the change was borne by the State. (Grade Crossing Case No. 292.)

3. Over-crossing of the New York and Harlem Railroad (leased to the New York Central and Hudson River Railroad Company) near the Scarsdale station of said company. This work is completed. The total cost of was \$20,552.94. The State's proportion, which has been paid, was \$5,138.23. The bridge, which is of steel, is about 59 feet long, 33 feet wide and 21 feet in the clear above the top of rail of the railroad. (Grade Crossing Case No. 306.)

4. Closing of a highway grade crossing of the Ulster and Delaware Railroad by the Ulster and Delaware plank road highway, at a point about one-third of a mile westerly of the Grand Hotel station of said company, in the town of Middletown, Delaware county. This work is completed. No expense to the State. (Grade Crossing Case No. 147.)

5. Closing of a highway grade crossing of the Ulster and Delaware Railroad by the highway leading to and from Pine Hill, about one-third of a mile easterly of the Grand Hotel station of said company. This work is completed. No expense to the State. (Grade Crossing Case No. 152.)

6. Changing the Main street grade crossing of the Erie Railroad, in the village of Salamanca, to an under-crossing. This work is completed. The total cost was \$48,752.69. The State's proportion, which has been paid, was \$12,188.17—except for land damages and fixing the floor of the bridge. The under-crossing is about 50 feet wide between abutments; clear headroom, 12½ feet. The bridge carrying the railroad is of steel. The bridge floor has been fixed and some land damages paid, the supplemental accounting and settlement for which is expected to be submitted here in a short time, after which there may be necessary a further accounting and settlement of further land damages claimed which are in litigation. (Grade Crossing Case No. 163.)

7. Changing the Minaville street (Amsterdam) grade crossing of the West Shore Railroad (leased to the New York Central and Hudson River Railroad Company) to an over-crossing. During the year this Board annulled this determination, an appropriation for a new canal bridge which was involved not having been made. (Grade Crossing Case No. 169.)

8. Changing the Gardiner road highway grade crossing of the New York Central and Hudson River Railroad, in the town of Stafford, Genesee county, to an under-crossing. This work is completed. The total cost was \$25,321.54. The State's proportion, which has been paid, was \$6,330.38. The under-crossing is 32 feet wide between abutments; clear headroom, 12½ feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 304.)

9. Closing a grade crossing of the Erie Railroad by the Sowle road highway, in the town of Hamburg, Erie county, at a point about one and one-half miles north of the Hamburg station of the said railroad, highway to be so changed in location that it would continue by the construction of a new piece of highway, to a point about 760 feet north of the present grade crossing and be there carried under the railroad. None of the expense to be borne by the State or the town of Hamburg, because of the fact that the inciting reason for the work being done was due to the desire of a street railroad company to cross the steam railroad at the proposed under-crossing. At the time of writing this report, the street railroad has been carried under the Erie railroad at the point in question but the highway has not, and this Board has so modified its determination, that the highway shall not cross underneath the railroad, but the travel has been diverted from the Sowle road crossing (which has been closed) by the construction of new pieces of highway. (Grade Crossing Case No. 323.)

10. Closing of two grade crossings of the Nineveh branch of the Delaware and Hudson Company's Railroad, in the town of Windsor, Broome county, known at Fisher's and Comstock's crossings, and diversion of the travel by the con-

struction of a new piece of highway. This work is completed. No expense to the State. (Grade Crossing Case No. 308.)

11. Changing the Lake avenue (Wolcott) grade crossing of the Rome, Watertown and Ogdensburg Railroad (leased to the New York Central and Hudson River Railroad Company), to an under crossing and closing the Conklin avenue grade crossing nearby, the travel to be diverted to the proposed under-crossing by the construction of a new piece of street. This work is completed. The total cost was \$7,700.99. The State's proportion, which has been paid, was \$1,925.25. The Lake avenue under-crossing is 25 feet wide between abutments; clear headroom, 13 feet. (Grade Crossing Cases No. 320 and 341.)

12. Changing the Main street (Oneonta) grade crossing of the Albany and Susquehanna Railroad (operated by The Delaware and Hudson Company), to an over-crossing. This work is completed. The total cost (of which the State bears its proportion) was \$118,748.41. The State's proportion, which has been paid, was \$29,687.10. The viaduct is of steel about 115 feet long, and varies from 42 to 50 ft. in width; it is 20 feet in the clear above the top of rail of railroad track. The approaches to the bridge are 465 feet long and 42 feet wide on one side and about 165 feet long and 50 feet wide on the other. (Grade Crossing Case No. 317.)

13. Changing the Jerusalem road or Old Farm road highway grade crossing of the Long Island Railroad, in the town of North Hempstead, Nassau county about 3,750 feet east of the Westbury station of said company, from grade to an over-crossing. This work is completed. The total cost was \$10,392.59. The State's proportion, which has been paid, was \$2,598.15. The bridge is of steel, about 80 feet long, 28 feet wide and 16½ feet in the clear above the top of rail of the railroad track. The approaches to the bridge are about 275 feet long and 28 feet wide on one side and about 300 feet long and 28 feet wide on the other. (Grade Crossing Case No. 208.)

14. Closing the Covert street or Hempstead road grade crossing of the Long Island Railroad, about 3,030 feet east of the Westbury station of said company, the travel to be diverted to an over-head crossing to be constructed at the Jerusalem road or Old Farm road, referred to in the preceding paragraph. This work is completed, but the settlement of expense (if any) has not yet been made. (Grade Crossing Case No. 209)

15. Closing of the Sheep Pasture road highway grade crossing of the Long Island Railroad, in the town of Brookhaven, Suffolk county, at a point about 8,960 feet east of the Setauket station of said company. During 1904, this Board modified its determination in this matter, in relation to the location of a new piece of highway to be constructed. The new piece of highway has not yet been constructed but it is expected that it soon will be. (Grade Crossing Case No. 225.)

16. This was a petition for a determination that the Hawkins road highway grade crossing of the Long Island Railroad, in the town of Brookhaven, Suffolk county, about 2,285 feet west of the Stony Brook station of said company, should be closed and discontinued, the travel to be diverted to an under-crossing to be constructed at a point about 150 feet west of the existing Hawkins road crossing. The Board so determined. During 1902, an application was made to the Board by the highway commissioners for a modification of this determination so that the crossing should be closed without the construction of the under-crossing. The Board so modified its determination and the crossing is closed. The total cost was \$14.97. The State's proportion, which has been paid, was \$3.74. (Grade Crossing Case No. 227.)

17. This was a petition for a determination that a highway grade crossing of the Long Island Railroad by a highway known as Mounts road, in the town of Brookhaven, Suffolk county, about 5,720 feet west of the Stony Brook station of said company, should be closed and discontinued, the travel to be diverted to an existing under-crossing of the railroad by the construction of a new piece of highway. The Board so determined. During 1902, an application was made to the Board by the highway commissioners for a modification of this determination so that the crossing should be closed without the construction of the new piece of highway. The Board so modified its determination and the crossing is closed. The total cost was \$14.97. The State's proportion, which was paid, was \$3.74. (Grade Crossing Case No. 228.)

18. This was a petition for a determination that a highway grade crossing of the Long Island Railroad by a highway known as Hay road or Old Hay road, in the town of Brookhaven, Suffolk county, about 5,200 feet west of the Yaphank station of said company, should be closed and discontinued, the travel to be diverted to other highways and crossings in the vicinity. The Board determined that farm gates should be erected at this crossing. This has been done, without expense to the State. (Grade Crossing Case No. 231.)

19. This was a petition for a determination that a highway grade crossing of the Long Island Railroad by a highway known as Town path, in the town of Brookhaven, Suffolk county, about 5,600 feet west of the Yaphank station of said company, should be closed and discontinued. The Board determined that farm gates should be erected at this crossing. This has been done, without expense to the State. (Grade Crossing Case No. 232.)

20. Closing the Dock road and Sills path or Patchogue and Yaphank road highway grade crossings of the Long Island Railroad, in the town of Brookhaven, Suffolk county, about 8,000 feet west of the Yaphank station of said company, and constructing an overhead crossing of the railroad between the two, and connecting pieces of highway. This work is completed. The total cost was \$5,528.99. The State's proportion, which has been paid, was \$1,382.25. The bridge, of steel, is about 90 feet long and 18 feet wide. The approaches are about 200 feet long and 20 feet wide on one side and about 200 feet long and 20 feet wide on the other. (Grade Crossing Case No. 233.)

21. Closing the grade crossing of the Long Island Railroad by Willow street in the village of Sag Harbor. The crossing is closed without expense to the State. (Grade Crossing Case No. 240.)

22. This was a petition for a determination that the Northport road highway grade crossing of the Long Island Railroad in the town of Huntington, Suffolk county, at a point about 1,770 feet east of the Greenlawn station of said company, should be closed and discontinued, the travel to be diverted to other highways and crossings in the vicinity. The Board determined that farm gates should be erected at the crossing. This has been done without expense to the State. A notice of claim for damages has been filed with this Board but nothing further has transpired here as to said claim. (Grade Crossing Case No. 252.)

23. Changing the Centreport and Dix Hills road highway grade crossing of the Long Island Railroad in the town of Huntington, Suffolk county, about 5,445 feet east of the Greenlawn station of said company, to an under-crossing, to be situated at a point about 50 feet east of the present grade crossing. In 1903, this Board modified its determination so that the under-crossing should be constructed at the point of grade crossing instead of 50 feet easterly thereof, and this has been done, the work being completed. The total cost was \$3,957.52. The State's proportion, which has been paid, was \$989.38. The under-crossing is 20 feet wide between abutments; clear headroom, 12 feet. (Grade Crossing Case No. 253.)

24. This was a petition for a determination that two grade crossings of the New York, Ontario and Western Railway (which was in effect one, as the highways meet at the railway), at points known as Delevan's crossings, in the town of Guilford, should be changed from grade to one under-crossing. Also that a crossing known as Bradbury's crossing (an overhead crossing which it seemed desirable to close), should be closed and discontinued, the travel thereon to be diverted to the proposed Delevan's under-crossing by the construction of a new piece of highway. The Board so determined. This work is completed. The total cost was \$9,508.03. The State's proportion, which has been paid, was \$2,377.00. Notices of claims for damages have been filed with this Board. The under crossing is 20 feet wide between abutments; clear headroom, 11½ feet. (Grade Crossing Case No. 318.)

25. This was a petition for a determination that a grade crossing of the Nypano Railroad (operated by the Erie Railroad Company), in the town of Randolph, Cattaraugus county, by a highway known as the McGraw highway, should be closed and discontinued, the travel thereon to be diverted to an existing under-crossing of said railroad by the construction of a new piece of highway. The Board so determined. Subsequently it appeared that one town board that should have been notified was not. This Board then began a proceeding on its own motion, under section 66 of the Railroad Law, in which proceeding it refused to determine that the crossing should be closed. (Grade Crossing Case No. 345.)

26. Changing a highway grade crossing of the Buffalo, Rochester and Pittsburgh Railway, by a highway known as the White's Corners road, or South Park avenue, in the town of West Seneca, Erie County, to an under-crossing. This work is completed. The under-crossing is 66 feet wide between abutments; clear headroom, 13 feet. The total cost was \$28,970.60. The State's proportion, which has been paid, was \$7,242.65. (Grade Crossing Case No. 339.)

27. Changing a highway grade crossing of the Western New York and Pennsylvania Railway (operated by the Pennsylvania Railroad Company), at a point between Brocton and Portland, to an over-crossing. This work is completed. The total cost was \$14,468.96. The State's proportion, which has been paid, was \$3,617.24. The bridge is of steel, 88 feet long, 20 feet wide and 22 feet 2½ inches in the clear above the top of rail of the railroad tracks. The approaches to the bridge are about 190 feet long on one side and about 310 feet on the other and are 20 feet wide on both sides. (Grade Crossing Case No. 348.)

28. Changing a highway grade crossing of the Pennsylvania Division of the New York Central and Hudson River Railroad, about 4,000 feet south of the Watkins station of said company, to an under-crossing. This work is completed. The total cost was \$6,632. The State's proportion, which has been paid, was \$1,658. The under-crossing is 24 feet wide between abutments; clear headroom, 13 feet. (Grade Crossing Case No. 344.)

#### 1902.

1. Closing two highway grade crossings of the New York, Ontario and Western Railway, near its Stony Ford Station, known as De Kay's and Wallace's crossings, and construction of new piece of highway not crossing the railway. This work is completed. The total cost was \$1,254.96. The State's proportion, which has been paid, was, \$313.74. (Grade Crossing Case No. 342.)

2. Closing two highway grade crossings of the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at Bronxville, Westchester county, the travel being diverted to a new crossing at grade constructed at a point between said two grade crossings. This work is completed. The total cost was \$1,382.40. The State's proportion, which has been paid, was \$345.60. (Grade Crossing Case No. 363.)

3. Closing two highway grade crossings of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) south of its Jones Point station and the construction of a new piece of highway not crossing the railroad. This work is completed. No expense to the State. (Grade Crossing Case No. 360.)

4. Closing two highway grade crossings of the Buffalo, Rochester and Pittsburgh Railway, near S. & B. Junction in the town of Great Valley, Cattaraugus county, the travel being diverted to an under-crossing of said railroad constructed between said two grade crossings. This work is completed. The under-crossing is 41 feet wide between abutments; clear headroom, 13 feet. The bridge carrying the railroad is of steel. The total cost was \$17,617.18. The State's proportion, which has been paid, was \$4,404.29. (Grade Crossing Case No. 365.)

5. Changing of highway crossings of the New York Central and Hudson River Railroad, the West Shore Railroad, its lessor, and the Oswego and Syracuse Railroad (leased to and operated by The Delaware, Lackawanna and Western Railroad Company), in the town of Geddes, Onondaga county. Three existing grade crossings will be closed, and an overhead highway bridge constructed. This work is completed and in use, but the completed work has not yet been approved by this Board. (See No. 19 under "1900.") (Grade Crossing Case No. 174.)

6. Changing the Westerlo turnpike highway grade crossing of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at Ravena, near Albany, to an under-crossing. This work is completed. The under-crossing is 30 feet wide between abutments; clear headroom 13 feet. The bridge carrying the railroad is of steel. The total cost of the work in which the State participated was \$20,464.76. The State's proportion, which has been paid, was \$5,020.05. A notice of claim for damages has been filed with this Board, but no further action in such claim seems to have been taken. (Grade Crossing Case No. 331.)

7. Closing a highway grade crossing of the Long Island Railroad by the road from Newbridge to Westbury, the travel to be diverted to a new crossing at

grade of said railroad to be constructed at a point about 200 feet east of the old grade crossing. This work is completed, the old crossing closed and the new one in use. The new piece of highway necessary to reach the new crossing was constructed without expense to the State, and the State bears no part of the expense. (Grade Crossing Case No. 359.)

8. This was a petition for a determination that the Kossuth street, Field street and Buffalo road highway grade crossings of the New York Central and Hudson River Railroad, and the Kossuth street grade crossing of the Buffalo, Rochester and Pittsburgh Railway, in the town of Gates, Monroe county, near Rochester, should be closed and discontinued, and that new streets should be laid out to an under-crossing to be constructed beneath the New York Central and Hudson River Railroad and the Buffalo, Rochester and Pittsburgh Railway, an over-head bridge for foot passengers to be constructed over the New York Central and Hudson River Railroad at the Field street crossing. The Board so determined. The town of Gates, which opposed the petition, appealed to the courts and the determination was sustained by the Court of Appeals. A plan for this work has been approved by this Board and the acquirement of necessary land has been begun. (Grade Crossing Case No. 330.)

9. Closing the South Country road highway grade crossing of the Long Island Railroad, in the town of Southampton, Suffolk county, about 3,920 feet east of the Quogue station, the travel thereon to be diverted to the grade crossing of said railroad next east by the opening of a new piece of highway. This work is completed. The total cost was \$400.23. The State's proportion, which has been paid, was \$100.06. (Grade Crossing Case No. 201.)

10. Closing the Dippold road highway grade crossing of the New York Central and Hudson River Railroad, in the town of Salina, Onondaga county (near Syracuse), the travel to be diverted by an existing piece of highway to an under-crossing of said railroad by the Brewerton plank road highway. This work is completed. The total cost was \$92.92. The State's proportion, which has been paid, was \$23.23. (Grade Crossing Case No. 372.)

11. Closing the North Hempstead turnpike highway grade crossing of the Long Island Railroad, about 6,200 feet easterly or northeasterly from the Roslyn station of said railroad, the travel to be diverted by the construction of new pieces of highway to an under-crossing of said railroad constructed nearby. This under-crossing is also used by travel diverted from the closed Cemetery road highway grade crossing of said railroad by the construction of new pieces of highway. This work is completed. The total cost was \$10,700.34. The State's proportion, which has been paid, was \$2,675.08. This crossing is included with the next succeeding closed crossing. The under-crossing is 20 feet wide between abutments, clear headroom, 12 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 216.)

12. Closing the Cemetery road highway grade crossing of the Long Island Railroad, about 7,490 feet easterly or northeasterly from the Roslyn station of said railroad company, the travel to be diverted by the construction of new pieces of highway to an under-crossing of said railroad constructed nearby. This under-crossing is also used by travel diverted from the closed North Hempstead turnpike highway grade crossing of said railroad by the construction of new pieces of highway. This work is completed. The total cost and State's proportion are as shown in the next preceding crossing. (Grade Crossing Case No. 217.)

13 and 14. Changing the Priors road or Manhasset and Old Westbury road highway grade crossing of the Long Island Railroad, between the Albertsons and Roslyn stations on said railroad from grade, to an under-crossing. This work is nearly completed, but its completion was delayed by the building of a retaining wall, which is not yet finished. The under-crossing is in use. (Grade Crossing Case No. 312.)

15. Changing Case's grade crossing of the Pittsburg, Shawmut and Northern Railroad, in the town of Genesee, Allegany county, to an under-crossing. This work is completed. The under-crossing is 24 feet wide between abutments; minimum clear headroom 14 feet. The total cost was \$12,219.71. The State's proportion, which has been paid, was \$3,054.93. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 355.)

16. Changing the Hotel or Main street grade crossing of the New York Central and Hudson River Railroad, in South Byron, Genesee county, to an under-

crossing, and closing the South Market street grade crossing of said railroad nearby, the travel to be diverted to the Hotel or Main street under-crossing by the constructoin of a new piece of highway. This work is completed. The total cost was \$53,459.76. The State's proportion, which has been paid, was \$13,364.94. The under-crossing is 41 feet wide between abutments; clear headroom, 13 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 386.)

17. Changing the Kingston road highway grade crossing of the New York, Ontario and Western Railway at Summitville, Sullivan county, to an under-crossing. This work is completed. The total cost was \$4,104.50. The State's proportion, which has been paid, was \$1,026.12. The under-crossing is 20 feet wide between abutments; clear headroom, 12 feet. The bridge carrying the railroad is of steel. (Grade Crossing Case No. 375.)

18. Closing a highway grade crossing of the New York Central and Hudson River Railroad at a point known as highway crossing No. 395, at Fox Ridge, Cayuga county, the travel to be diverted to an existing over-crossing of said railroad immediately west of said grade crossing, in the town of Montezuma, in said county, by the construction of a new piece of highway from the grade crossing to the overhead crossing. This work is completed. The total cost was \$2,606.29. The State's proportion, which has been paid, was \$651.57. (Grade Crossing Case No. 382.)

19. Changing the grade crossing of The Delaware and Hudson Company's railroad by the New Scotland road highway at Slingerlands, near Albany, known as the Kilmer crossing, to an over-crossing. This work is completed. The total cost was \$14,117.35. The State's proportion, which has been paid, was \$3,529.34. The bridge is of steel, about 37 feet long, 20 feet wide and 21 feet in the clear above the top of rail of the railroad track. The approaches to the bridge are 450 feet long and 20 feet wide on one side and 175 feet long and 20 feet wide on the other. (Grade Crossing Case No. 285.)

20. This was a petition for a determination, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, that the Westinghouse avenue, Edison avenue, State street, Liberty street, Union street, North Center street, Warren street and Fonda street grade crossings of the railroad operated by The Delaware and Hudson Company in the city of Schenectady, and the Westinghouse avenue, Edison avenue, State street, Liberty street, Union street, Green street and Front street grade crossings of the New York Central and Hudson River Railroad, in said city, should be changed to under-crossings. The Board so determined the Westinghouse avenue crossings of the New York Central and Hudson River Railroad to be closed and discontinued, a new piece of street constructed therefrom to Edison avenue, and the traffic of Westinghouse avenue to be thereby diverted to the Edison avenue under-crossing; the North Center street and Warren street crossing to be closed and discontinued, and new pieces of street constructed to one under-crossing to be used by the travel from both streets — all substantially as shown by a plan on file in this office. This work is under way. The work at these crossings is involved with the work next referred to. During 1905 this Board approved a change of plan so that the Liberty street crossing shall be one for teams and pedestrians instead of for pedestrians alone. It is expected that this entire work will be practically completed by the end of 1906. Five of these under-crossings are in use. (Grade Crossing Case No. 369.)

21. This was a petition for a determination that the Pine street, Fonda street, Nott street and Romeyn street grade crossings of the railroad operated by The Delaware and Hudson Company in the city of Schenectady should be changed from grade to under-crossings of said railroad. The Board so determined, the State and city to bear but the statutory proportion of the cost of the work for a single track. The work at these crossings is involved with the work last referred to, and is nearing completion, the four under-crossings being in use. (Grade Crossing Case No. 390.)

22. Closing the Rock Glen road highway grade crossing of the Erie Railroad in the town of Gainesville, Wyoming county, at a point about one-half mile east of the Rock Glen station on said railroad, the travel thereon to be diverted by an existing connecting piece of highway to the Gainesville road highway grade crossing of said railroad. This work is completed. No expense to the State. (Grade Crossing Case No. 395.)

## 1903.

1. Closing and discontinuance of two highway grade crossings of the New York, Ontario and Western Railway in the town of Wallkill, Orange county, known as Sand's and McCoy's crossings, and the construction of new pieces of highway and an overhead bridge crossing of the railway situated about midway between the two closed grade crossings. This work is completed. The total cost was \$7,990.00. The State's proportion, which has been paid, was \$1,997.50. The bridge is of steel, about 92 feet long, 20 feet wide and 21 feet in the clear above the top of rail of the railroad track. The approaches to the bridge are 375 feet long and 20 feet wide on one side and 200 feet long and 20 feet wide on the other. (Grade Crossing Case No. 402.)

2. Closing and discontinuance of the Darling grade crossing of the Buffalo, Rochester and Pittsburgh Railway in the town of Great Valley, Cattaraugus county, and the construction of a new piece of highway to the Peth road highway and crossing at grade of said railway. This work is completed, without expense to the State. (Grade Crossing Case No. 411.)

## 1904.

1. Closing and discontinuance of the Ionia and East Bloomfield road highway grade crossing of the Auburn division of the New York Central and Hudson River Railroad in the town of West Bloomfield, Ontario county, and the construction of a new piece of highway and an undercrossing of the railroad at another point. This work is completed. The under-crossing is 20 feet wide between abutments, and the overhead clearance is 13 feet. A settlement of the cost has not yet been made. (Grade Crossing Case No. 396.)

2. Closing and discontinuance of the Lights highway grade crossing of the New York and Putnam division of the New York Central and Hudson River Railroad in the town of Carmel, Putnam county, and the construction of new pieces of highway and an overhead bridge crossing of said railroad at another point. At time of writing this report steps are being taken toward the commencement of this work. (Grade Crossing Case No. 398.)

3. Closing and discontinuance of the Van Anden grade crossing of the New York Central and Hudson River Railroad in Auburn and the construction of new streets. This work is under way. (Grade Crossing Case No. 470.)

4. Construction of an under-crossing for pedestrians of the New York Central and Hudson River Railroad at Main street, Herkimer. This under-crossing is constructed, but a settlement of the cost has not yet been made. (Grade Crossing Case No. 498.)

5. Closing and discontinuance of one of the Cady's highway grade crossings of the Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), the construction of a new piece of highway to the other Cady's grade crossing of said railroad and changing it to an under-crossing of said railroad. This work will be begun in the spring. (Grade Crossing Case No. 494.)

6. Closing and discontinuance of the Newburgh and Campbell Hall road highway grade crossing of the New York, Ontario and Western Railway in the town of New Windsor, Orange county, and the construction of a new piece of highway and an overhead bridge crossing of said railway at another point. This work has been practically completed and the over-crossing is in use, but the completed work has not yet been approved by this Board. (Grade Crossing Case No. 488.)

7. Closing and discontinuance of the Gitties grade crossing of the Rome, Watertown and Ogdensburg division of the New York Central and Hudson River Railroad in the town of Richland, Oswego county, and the construction of a new piece of highway to the next crossing at grade of said railroad south. This work is completed, without expense to the State. (Grade Crossing Case No. 487.)

8. Changing the Broadway grade crossing of the New York and Putnam division of the New York Central and Hudson River Railroad near the Van Cortlandt station on said railroad in the Borough of the Bronx, New York city, to an under-crossing. This work is completed and the under-crossing is in use but the completed work has not yet been approved by this Board. (Grade Crossing Case No. 503.)



9. Changing the Chautauqua road or Valley street or Lake road grade crossing of the Pennsylvania Railroad in the village of Mayville, Chautauqua county, to an over-crossing. This work is nearing completion. (Grade Crossing Case No. 491.)

10. Changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an under-crossing. This work is nearing completion and the under-crossing is in use. (Grade Crossing Case No. 416.)

1905.

1. Closing and discontinuance of the East Fourth street and the Schuyler street grade crossings of the railroad operated by the New York Central and Hudson River Railroad Company and the railroad of the New York, Ontario and Western Railway Company in the city of Oswego and the construction of a new street from East Fourth street to Schuyler street to divert the travel from the present East Fourth and Schuyler streets grade crossings through Schuyler street to an under-crossing of said railroads to be constructed at a point where East Seventh street and Schuyler street intersect. Detail plans, specifications and estimate of expense for this work have been approved by this Board. The work is to be done by the New York, Ontario and Western Railway Company. (Grade Crossing Case No. 527.)

2. Closing and discontinuance of three highway grade crossings of the New York, Ontario and Western Railway in the town of Wallkill, Orange county, near the Crystal Run station on said railway, and the construction of new pieces of highway on each side of the railway to an overhead bridge crossing to be located about at the point of one of the closed grade crossings. Detail plans and estimate of expense for this work have been approved by this Board. The work is to be done by the company itself. (Grade Crossing Case No. 459.)

3. Closing and discontinuance of two highway grade crossings of the New York, Ontario and Western Railway in the town of Wallkill, Orange county, near the Stony Ford station on said railway, and the construction of new pieces of highway and an overhead bridge crossing of said railway to be constructed about midway between the two grade crossings. Plans and estimate of expense for this work have been approved by this Board. The company is to do this work itself. (Grade Crossing Case No. 442.)

4. Changing the Pine street (or avenue), Niagara Falls, grade crossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad to an over-crossing. At the time of writing this report detail plans, specifications and an estimate of expense for this work have not yet been submitted to this Board for approval. (Grade Crossing Case No. 293.)

5. Changing the Niagara street grade crossing of the Erie Railroad in Niagara Falls to an under-crossing of said railroad. At the time of writing this report detail plans, specifications and an estimate of expense for this work have not yet been submitted to this Board for approval. (Grade Crossing Case No. 501.)

6. Closing and discontinuance of the Caskey's grade crossing of the Erie Railroad at Sparrowbush in the town of Deer Park, Orange county, and the construction of new pieces of highway and an under-crossing of said railroad at another point. Detail plans, specifications and an estimate of expense for this work have been approved by this Board. (Grade Crossing Case No. 464.)

7. Changing the Buffalo road highway grade crossing of the Buffalo, Rochester and Pittsburgh Railway at a point between Bigtree road and Deuel's Corners, in the town of East Hamburg, Erie county, to an undercrossing. The company is to do the work itself. (Grade Crossing Case No. 419.)

8. Closing and discontinuance of three highway grade crossings of the New York, Ontario and Western Railway near its Livingston Manor station in the town of Rockland, Sullivan county, and the construction of a new piece of highway and an overhead bridge crossing of said railway. A plan and specifications for this work have been approved by this Board. It is likely that the company will do the work itself. (Grade Crossing Case No. 462.)

The determinations since the last report in all matters under sections 60, 61, 62 and 68 will be found in this volume.

There is no provision of law requiring a street surface railroad to bear any share of the expense of eliminating a street, avenue or highway grade crossing of a steam railroad, which crossing is used by a street surface railroad.

Following is a statement of the condition of the State's appropriation. The determination in the one instance referred to in the 1904 report, where the company had been notified not to proceed with the work until further notification, was annulled during 1905. Amounts claimed for land damages where the State, the municipalities and the companies deny any exist, are not included in this balance sheet.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES FOR ELIMINATION OF GRADE CROSSINGS.

*Grade Crossing Appropriations—Account of Construction.*

1898. Appropriation.....	\$90,000 00	
1899. Appropriation.....	92,500 00	
1900. Appropriation.....	92,500 00	
1901. Appropriation.....	92,500 00	
1902. None.....		
1903. None.....		
1904. Appropriation.....	\$150,000 00	
Deduct previously appropriated, lapsed and not re-appropriated.....	74,893 08	
		75,106 92
1905. Appropriation.....	300,000 00	
		<u>\$742,606 92</u>
1905. Special appropriation, Schenectady.....		75,000 00
		<u>\$817,606 92</u>

*Expenditures.*

Amount paid by State Treasurer (State's proportion) to date.....	301,845 02	
		\$515,761 90
Less amount obligated on account contracts made and estimated costs (State's proportion), some land damages and some land...	442,416 49	
Balance.....		<u><u>\$73,345 41</u></u>

*Grade Crossing Appropriations—Account of Expenses.*

1898.	Appropriation.....	\$10,000 00	
1899.	Appropriation.....	7,500 00	
1900.	Appropriation.....	7,500 00	
1901.	Appropriation.....	7,500 00	
1902.	Appropriation.....	5,000 00	
1903.	Appropriation.....	7,500 00	
1904.	Appropriation.....	6,500 00	
1905.	Appropriation.....	5,000 00	
			<hr/> \$56,500 00

*Expenditures.*

Amount expended to date.....	51,497 29
Balance.....	<hr/> \$5,002 71 <hr/>

Of the \$300,000 appropriation of 1905 \$159,812.25 has been set apart by this Board for the Schenectady work. It is believed after careful estimate that this amount with the \$75,000 heretofore specially appropriated for the Schenectady work will pay the State's proportion of the cost.

Following will be found two tables, the first, of steam railroads crossing steam railroads and steam railroads crossing streets, avenues and highways, the second, of street surface railroads crossing steam railroads and crossing highways outside the limits of incorporated cities and villages:

*Surface Steam Railroads—Crossings with Steam Railroads and with Streets, Avenues and Highways.*

As shown by reports for the year ending June 30, 1905.

NAME OF ROAD.	CROSSINGS WITH OTHER STEAM RAILROADS.						CROSSINGS WITH STREETS, AVENUES AND HIGHWAYS.								
	PROTECTED BY—						PROTECTED BY—								
	Unprotected.	Gates.	Flagmen.	Both gates and flagmen.	Interlocking device.	Signals not interlocked.	Over grade.	Under grade.	Unprotected.	Gates.	Flagmen.	Both gates and flagmen.	Crossing alarm only.	Over grade.	Under grade.
Albany and Hudson.....							1	2	36	1					
Bath and Hammondport.....									12						
Boston and Maine.....								2	77	9	8		2	18	20
Brooklyn and Rockaway Beach.....			2				2		5	3					
Buffalo, Attica and Arcade.....									27						1
Buffalo, Rochester and Pittsburgh.....			5	1			3	6	181		14	1	7	7	14
Buffalo and Susquehanna.....									16						1
Campbell Hall Connecting.....							1		4		1				1
Catskill Mountain.....									21					3	
Catskill and Tannersville.....									5					1	
Central Dock and Terminal.....								1			2		1	8	11
Central New England.....				1	1			6	97						
Champlain and St. Lawrence.....									1						
Champlain Lake.....															
Danversville and Mount Morris.....		2			5	3	8		10						
Delaware and Hudson.....					6	11	4	17	535	39	73		31	25	38
Delaware, Lackawanna and Western.....	1				2	2			308	44	54		61	30	41
Dunkirk, Allegheny Valley and Pittsburgh.....	1				1	2	3		43	2	5				
Elmira and Lake Ontario.....		1			2			3	124					1	11
Elmira and Williamsport.....									5	1					1
Erie.....	7	2			22	20	19	15	690	70	73	9	51	65	71
Fonda, Johnstown and Gloversville.....									41		4				1
Fulton Chain.....									4						
Genesee and Wyoming.....					2				14					1	
Glenfield and Western.....									11					1	
Greenwich and Johnsonville.....														1	
Jamestown, Chautauqua and Lake Erie.....				1	2			1	18	2			25	1	2
Kanona and Prattsburgh.....									12				4		
Keseeville, Ausable Chasem and Lake Champ'n.....									5						
Lake Champlain and Moriah.....								1	6					1	2



*Surface Steam Railroads—Crossings with Steam Railroads and with Streets, Avenues and Highways—Concluded.*

As shown by reports for the year ending June 30, 1905.

NAME OF ROAD.	CROSSINGS WITH OTHER STEAM RAILROADS.						CROSSINGS WITH STREETS, AVENUES AND HIGHWAYS.								
	PROTECTED BY—						PROTECTED BY—								
	Unprotected.	Gates.	Flagmen.	Both gate and flagmen.	Interlocking device.	Signals not interlocking.	Over grade.	Under grade.	Unprotected.	Gates.	Flagmen.	Both gate and flagmen.	Crossing alarm only.	Over grade.	Under grade.
South Buffalo.....						1	6		1		6	1	18	2	
Staten Island.....									17		3	10	15	3	
Staten Island Rapid Transit.....									3		10	14	15	3	
Sterling Mountain.....									8		6	20	17	5	
Syracuse, Binghamton and New York.....					3		5	4	45	6	20	11	17	6	
Terminal of Buffalo.....	2				1				11		11			4	
Union and Delaware.....			1		1				113					8	
Union Valley.....						12			12						
United States and Canada.....		1			1				21						
Western New York and Pennsylvania.....					15	6	10		323	2	15		3	16	
	17	11	15	10	120	93	147	125	6,729	301	841	413	423	703	891

RECAPITULATION.

Crossings with surface steam railroads, unprotected.....	17
Crossings with surface steam railroads, protected.....	249
Crossings with surface steam railroads, over or under grade.....	272
Total number of crossings with steam railroads.....	538
Crossings with streets, avenues and highways, unprotected.....	6,729
Crossings with streets, avenues and highways, protected.....	1,978
Crossings with streets, avenues and highways, over or under grade.....	1,594
Total number of crossings with streets, avenues and highways.....	10,301

*Street Surface Railroads—Crossings with Steam Railroads and  
with Highways outside of Cities and Villages.*

As shown by reports for year ending June 30, 1905.

NAME OF ROAD.	CROSSINGS WITH STEAM RAILROADS.								CROSSINGS WITH HIGHWAYS OUT- SIDE OF CITIES AND VILLAGES.				
	Unprotected.	PROTECTED BY—						Over grade.	Under grade.	Unprotected.	Protected by cross- ing alarm only.	Over grade.	Under grade.
		Gates.	Flagmen.	Both gates and flagmen.	Interlocking devices.	Signals not interlocked.	Derauling devi- ces on electric railroads.						
Adirondack Lakes'.....	2	1	1					1		4			
Auburn and Syracuse.....								1					
Ballston Terminal.....								1		10			
Bennington and Hoesick Valley.....	1							1	3	9			
Binghamton.....	2		2					3	6	3		1	
Black River.....	3	1											
Brooklyn Heights.....	3	1	3				7	9	5				
Brooklyn, Queens County and Suburban.....							*4		5				
Buffalo and Depew.....								1	1	3			
Buffalo Southern.....	2						1		3	18			
Buffalo and Williamsville..									1	5			
Chautauqua.....										5			
Citizens' (Fishkill).....				1					1				
Coney Island & Brooklyn..			2										
Coney Island & Gravesend..	1						2						
Corning and Painted Post							1	1					
Cortland County.....	1		2							1			
Crosstown (Buffalo).....	5	1	5	3	1		12	15	4	2			
Dry Dock, E. B'way and Battery (N. Y. City).....			1										
Dunkirk and Fredonia.....	1			1									
Elmira and Seneca Lake...							2			8			
Elmira, Water, Light and R. R.....			2	1			2			1			
Fonda, Johnstown and Glo- versville.....	2		2					3		23	1	1	4
42d St., Man. & St. N. Ave., (N. Y. City).....				1									
Geneva, Waterloo, Seneca Falls and Cayuga Lake..	2		1						1	7			
Hamburg.....								6	4	6			
Hornellsville and Canisteo.				1						2			
Hudson Valley.....	4		2		1		†2	2	2	66			3
Huntington.....										8			
International (Buffalo)....	6	2	8	1	4	1	4	20	7	43	2	1	
Ithaca.....	3									1			
Jamestown.....		5					1	1	1				
Kingston.....		1	5					1	1				
Lake Erie.....										9			
Lima-Honeoye.....										3		1	
Long Island Electric.....			2	1			1	1					
Nassau (Brooklyn).....	2	2	1				4	1					
Nassau County.....										5			
New Paltz, Highland and Poughkeepsie.....								2					
New York & Long Island..	1						†4	3		13			
New York & Queens Co..				3				2					
New York and Stamford..								3		10			
Niagara Gorge.....	2								1	1			
Northport.....										3			
Ogdensburg.....	1						†1	1					

*Street Surface Railroads—Crossings with Steam Railroads and  
with Highways outside of Cities and Villages—Concluded.*

NAME OF ROAD.	CROSSINGS WITH STEAM RAILROADS.							CROSSINGS WITH HIGHWAYS OUT- SIDE OF CITIES AND VILLAGES.			
	Unprotected.	PROTECTED BY						Unprotected.	Protected by cross- ing alarm only.	Over grade.	Under grade.
		Gates.	Flagmen.	Both gates and flagmen.	Interlocking devices.	Signals not interlocked.	Derailing devi- ces on electric railroads.				
Olean.....	5		1	1			3	1	20		
Olean, Rock City & Bradf'd									7		
Oneida.....								1			
Oneonta, Cooperstown and Richfield Springs.....							1		43		
Orange County.....								3	6		
Oswego.....	3		4					2	2		
Peekskill.....								1	5		
Penn Yan, Kouka Park & Branchport.....									3		
Plattsburgh.....	1		1					1	1		
Port Jervis.....							1	1	1		
Poughkeepsie City & Wap- pinger's Falls.....	2							2			
Richmond Light and R. R.				1	*2						
Rochester.....			3					11	9	44	
Rochester and Eastern.....							\$3	2	4	42	2
Rochester and Suburban.....			1					2	4		
Schenectady.....			2	1	1			1	1	28	
Southern Boulevard.....				1							
Staten Island Midland.....				1			*1				
Syracuse, Lakeside & Bald- winsville.....	1						1	2	3		
Syracuse Rapid Transit.....	3		11					2	2	1	
Syracuse and Suburban.....									6		
Tarrytown, White Plains & Mamaroneck.....				2				1			
34th St. Crosstown (N.Y. City).....			1								
Troy and New England.....									5		
28th & 29th Sts. (N.Y. City)				2							
Union (New York City).....				2	2			1			
United Traction (Albany & Troy).....	2		5	9				3	2		
Utica and Mohawk Valley	1						†7	2	7	1	
Wallkill Transit.....			1					2	6		
Waverly, Sayre & Athens.....								2			
Westchester Electric.....				1			1	1			
Yonkers.....							1	1			
	62	16	69	32	11	1	66	114	78	496	9

RECAPITULATION.

Crossings with steam railroads unprotected.....	62
Crossings with steam railroads protected.....	195
Crossings with steam railroads over or under grade.....	192
Total number of crossings with steam railroads.....	449
Crossings with highways, outside of cities and villages, unprotected.....	496
Crossings with highways, outside of cities and villages, protected by crossing alarms only.....	9
Crossings with highways, outside of cities and villages, over or under grade.....	14
Total number of crossings with highways and outside of cities and villages.....	519

\*Also by gates. †Also by gates and flagmen. ‡1 also by gates; 2 also by flagmen; 1 also by gates and flagmen. §1 also by flagmen.



**Physical Condition of Steam Surface Railroads.**

The physical condition of steam surface railroads has continued to improve. This, of course, is and should be the result of the continuing large earnings. Irrespective of the amounts expended for construction and equipment from capital account, the companies in 1905 expended from operating expenses for maintenance of way and structures \$43,893,512.18, which is \$1,474,608.61 more than was expended from operating expenses for this purpose in 1904. They expended from operating expenses for maintenance of equipment \$49,727,179.68, which is \$3,402,942.98 more than was expended from operating expenses for this purpose in 1904.

In former years the board recommended bills for the safety of the public and employees, most of which became laws and have been in operation for some years, such as for automatic couplers and air brakes on freight trains, safety switches, the grade crossing law, etc. We have considered whether we should recommend to the Legislature a bill to secure the introduction within a limited period of steel passenger cars and the lighting within a limited period of all passenger cars by gas or electricity. Progress is being made in both of these lines, however, and it does not seem necessary to recommend to the Legislature, this year at least, the passage of bills on these subjects. Facing point switches should be protected by signals in addition to the target on the switch stand. We are considering recommending to the Legislature the passage of a bill on this subject. Many of these switches are now thus protected.

We have continued to recommend that cattle-guards be maintained at country highway crossings of railroads in accordance with section 32 of the Railroad Law. As stated heretofore, some companies object to maintaining these guards, as they consider them no longer necessary. While it is true in some of the more thickly populated districts the necessity for cattle-guards is not apparent, still in other portions of the State they are of value and we believe that this requirement of the law should still be insisted upon.

We have also continued to recommend that frogs and guard-rails be blocked, and much blocking is done, although objecting companies contend that the blocking is not necessary, and may be dangerous. In 1905 no employees were killed, although two were injured, through catching feet in frogs and guard-rails.

Complaints as to poor condition or lack of railroad fencing along farm lands have been unusually frequent this year, particularly on the Rutland Railroad. This company, however, has shown commendable diligence in re-building old and building new fences along

the portion of its line from which the complaints came. It may be said that for years prior to the operation of this portion of the line by the company at present operating it practically no fences were maintained.

The Legislature of 1905 passed an act (chapter 611) providing that it shall be the duty of every railroad corporation operated by steam power to cause thorough inspections to be made at least every three months of the boilers of all the locomotives used on said railroads, a certificate of which inspection in each case shall be filed in this office; the statute providing that if it shall be ascertained a locomotive boiler is unsafe for use the same shall not again be used until it shall be repaired and made safe, and also providing that a certificate of a boiler inspector that the boiler is in a safe condition for use shall in each case also be filed in this office. Under this statute 5,353 certificates to the effect stated were filed in this office for the first three months, and it is expected that the average of each three months hereafter will be about this number. The Board believes that the law on this subject is an excellent one and will be productive of good results in preventing explosions from bad conditions of locomotive boilers. The certificates filed here have shown that many boilers were in bad condition but were quickly repaired and put in condition by reason of the existence of this statute. The statute also provides for the appointment by the Board of a locomotive boiler inspector, but inasmuch as no appropriation was made to pay his salary, this appointment has not been made. The Legislature, however, will be asked to make an appropriation for the salary of this position.

The usual inspections of steam surface railroads (about half the mileage of the State being inspected each year) have been made by the inspector for the Board, copies of which as usual were transmitted to the companies with letters of recommendation for improvements where recommendations were made in the reports. These reports are printed in this volume and at the end of each, where recommendations were made, will be found a statement as to compliance by the company with the recommendations.

The inspector of the Board reports generally on the physical condition of steam surface railroads as follows:

Improvement in the physical condition of steam railroads has been very marked during the year 1905. Reducing the ruling grades and curves on the more important lines, has been prosecuted with vigor. In many cases the roadway for long distances being practically rebuilt to accomplish that purpose. All timber structures in the roadway of most important roads have been replaced with permanent steel bridges on substantial masonry or with concrete arch or box culverts,

iron pipe, and filling. On nearly all the other roads the number of wooden structures has been greatly reduced. Most of the light iron bridges have been replaced with steel structures of modern design and sufficient strength to carry, with proper factor of safety, the heaviest motive power and rolling stock now in use on any of the railroads of this state. The smaller openings to grade, such as open culverts and cattle passes, have been greatly reduced by replacing them with concrete arch or box culverts, iron pipe and filling or with masonry abutments and solid floors and ballasting the tracks over them. Concrete masonry is now in general use and the results have been very satisfactory. More reballasting of tracks has been done than in any former year since your inspector has been connected with the Board. The condition of cross-ties is generally excellent and renewals made as promptly as necessary. Extensive renewal of light and worn rail has been made and the new rail is generally heavier than that replaced. Most railroads, as recommended by you, have placed inside guard rails on bridges, thus insuring greater safety. The station buildings have been generally well maintained and many new ones erected. Extensive additions have been made to freight and storage yards at the important points and at many of lesser importance. New and long passing tracks have been built and the existing ones extended where necessary to facilitate the movements of trains. Additional main tracks have been or are being constructed. The motive power and rolling stock have been generally improved, and much new built or purchased; the new being of better design and of greater power or capacity than the generality of that formerly in use. The system of block signalling has been rapidly extended and the use of electric block signals adopted by most of the important lines. The older and partially antiquated interlocking plants have, in most cases, been replaced and many new ones installed. All roads are now using the duplicate order system of train dispatching which has resulted in rendering the possibilities of accident much less than under the former single order system.

On June 30, 1905, the number of locomotive engines (passenger and freight) owned and leased by the companies reporting was 9,668, an increase of 1,279 over 1904. Of these locomotives 8,674 are equipped with power brakes and 8,657 with automatic couplers. The number of freight cars owned and leased by the companies reporting was 292,113, an increase of 1,215; of these 289,039 are equipped with automatic couplers and 250,233 with automatic brakes. The last year in which changes in control of railroads increased the number of companies reporting to this State was 1902, when the Rutland came in. In that year the total number of locomotives (passenger and freight) reported was 7,784; the total number of freight cars reported was 277,453. There were also reported in 1905 10,138 cars used in passenger trains, of which 390 were parlor, sleeping, hotel, buffet and dining cars; 5,473 first-class passenger coaches; 489 second-class passenger coaches; 1,236 combination baggage and passenger cars; 2,341 baggage, mail and express cars; 209 motor cars. These figures do not include Pullman cars.

A table of steam surface railroad mileage, in details and total, will be found in this volume.

Following is a table of miles of railroad in and out of the State operated by electricity by steam surface railroad companies reporting to this Board:

# TWENTY-THIRD ANNUAL REPORT OF THE

OPERATED BY ELECTRICITY INCLUDED IN STEAM ROADS.	MAIN TRACK.			ADDITIONAL TRACKS.				SIDINGS.	
	In New York State.	Entire Line.		In New York State.	Entire Line.		In New York State.	Entire Line.	
		Owned.	Leased.		Owned.	Leased.		Owned.	Leased.
Albany and Hudson.....	37.35	37.35	.....	3.10	3.10	.....	5.09	5.09	.....
*Boston and Maine.....	18.10	18.10	27.88	.....	.....	.....	1.15	1.15	2.43
†Pondia, Johnstown and Gloversville.....	53.37	53.37	.....	21.20	21.20	.....	6.50	6.50	.....
†Long Island.....	5.14	5.14	.....	5.95	5.95	.....	.....	.....	.....
†New York, New Haven and Hartford.....	10.84	10.84	47.64	.....	3.18	14.65	.....	1.87	5.85
Rochester, Charlotte and Manitou.....	7.50	7.50	.....	.....	.....	.....	.....	.....	.....
Total.....	103.36	132.30	75.52	30.25	33.43	14.65	11.84	14.86	8.28

Total main line.....	N. Y. State.	Entire Line.
Additional tracks.....	103.36	207.82
Sidings.....	30.25	48.06
	11.84	23.14
Total all tracks.....	145.45	279.04

	N. Y. State.	Entire Line.
Total main line.....	103.36	207.82
Additional tracks.....	30.25	48.08
Sidings.....	11.84	23.14
Total all tracks.....	145.45	279.04

\* Electric street roads.

† Fitted for both steam and electrical operation.

### Elevated Railroads.

The Interborough Rapid Transit Company operates the Manhattan Elevated Railway as well as the Subway Railroad. The elevated railroads in Brooklyn are owned by the Brooklyn Union Elevated Railroad and are leased to and operated by the Brooklyn Heights Railroad Company (street surface) and the statistics in relation to them, except accidents, are included in the report of The Brooklyn Heights Railroad Company and in the figures given herein under the title "Street Railroads." The elevated as well as the subway railroads are operated by the third rail electric system.

The total number of passengers carried on the Manhattan Railway during the year ending June 30, 1905, was 266,381,930; in 1904 it was 286,634,195, a decrease in 1905 of 20,252,265. The average carried per day in 1905 (365 days) was 729,813; in 1904, 785,299.

Trains began running in the subway on October 27, 1904, and the number of passengers carried thereon from that date to June 30, 1905, inclusive, was 72,722,830, the average carried per day (all days counted) being 295,622.

Following is a table of accidents occurring during the year ending June 30, 1905, on the elevated railroads. These are not included in the steam surface railroad accident table preceding nor in the street surface railroad accident table following.

1905.	PASSENGERS.		EMPLOYEES.		OTHERS.		TOTAL.	
	Killed.	In.	Killed.	Injured.	Killed.	Injur.	Killed.	Injured.
Brooklyn Union Elevated.....	5	18	9	3	9	12	23	33
Interborough Rapid Transit (Manhattan Railway).....	18	59	14	6	....	....	32	65
Total.....	23	77	23	9	9	12	55	98

The length of the Manhattan and Brooklyn elevated railroads is given in a table published in this volume. The report of the Interborough Rapid Transit Company for the year ending June 30, 1905, will be found in the second volume of this report.

Statistics as to elevated and subway railroads are included in a street railroad table under the next title.

### Street Railroads.

The statements under this title refer to street surface, elevated and subway railroads, except as noted. Forty-six and two hundred and seventy-one one-thousandths miles are outside of the State. }The figures given are from the reports of the companies for the fiscal year ending June 30, 1905, except where

otherwise stated. The comments refer to matters up to the time of writing this report. The separate reports of the companies for the year ending June 30, 1905, will be found in the second volume of this report.

Following is a comparative table of statistics compiled from the reports of these companies for the years ending June 30, 1904, and June 30, 1905. The statistics in this table are those of street surface electric, cable and horse railroads and those of the Brooklyn Union elevated railroad, the Manhattan elevated railway and the subway.

# COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

### Comparative Statement for Years Ending June 30, 1904 and 1905.

#### STREET SURFACE, ELEVATED AND UNDERGROUND RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Assets.</i>		
Cost of road and equipment*.....	\$573,406,397 91	\$594,842,749 64
Permanent investments, supplies, cash and other assets.....	141,052,671 06	141,766,704 83
Total assets.....	\$714,459,068 97	\$736,609,454 47
<i>Liabilities.</i>		
Capital stock issued.....	\$315,686,550 00	\$318,842,959 82
Funded debt issued*.....	283,922,467 01	303,742,735 14
Other liabilities.....	100,324,884 75	103,482,312 89
Total liabilities.....	\$699,933,901 76	\$726,068,007 85
Excess of assets over liabilities.....	\$14,525,167 21	\$10,541,446 62
<i>Earnings from Operation.</i>		
From passenger transportation.....	\$65,521,319 47	\$69,920,488 98
From freight and express transportation...	517,780 04	678,281 22
From mail transportation.....	73,189 68	89,711 59
From miscellaneous sources.....	40,141 40	41,603 87
Gross earnings from operation.....	\$66,152,430 59	\$70,730,085 66
<i>Operating Expenses.</i>		
Maintenance of way and structures.....	\$2,929,145 22	\$3,491,112 99
Maintenance of equipment.....	4,574,442 96	5,623,634 97
Operation of power plant.....	6,043,611 92	6,722,629 84
Operation of cars.....	17,484,495 51	17,712,438 37
General expenses.....	6,211,978 21	6,645,627 37
Total operating expenses.....	\$37,243,673 82	\$40,195,443 54
Net earnings from operation.....	\$28,908,756 77	\$30,534,642 12
Income from other sources.....	3,090,108 38	3,121,224 17
Gross income from all sources.....	\$31,998,865 15	\$33,655,866 29

\*Does not include cost of subway built by New York City nor amount of bonds issued to pay for same.

## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STREET SURFACE, ELEVATED AND UNDERGROUND RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Deductions from Gross Income.</i>		
Interest*	\$6,206,683 82	\$5,848,453 08
Rentals of leased lines†	17,901,502 27	20,045,162 98
Taxes	3,727,466 27	3,943,697 24
Miscellaneous	25,598 93	771,286 05
Total deductions from gross income...	\$27,861,251 29	\$30,608,599 35
Net income from all sources	\$4,137,613 86	\$3,047,266 94
<i>Payments from Net Income.</i>		
Dividends†	\$2,350,803 96	\$4,393,800 04
Miscellaneous	384,377 05	.....
Total payments	\$2,735,181 01	\$4,393,800 04
Surplus or deficit for year	\$1,402,432 85	\$1,346,533 10
<i>Mileage.</i>		
Miles of road built and operated	\$2,032.349	\$2,099.798
Miles of additional track	950.105	993.434
Miles of sidings	198.028	212.228
Total miles of track	3,180.482	3,305.460
	June 30, 1904.	June 30, 1905.
†Used by lessors as follows (see Table D):		
Interest	\$6,821,398 62	\$8,476,383 40
Dividends	10,575,789 84	11,015,270 97
Not designated	504,313 81	553,506 61
	\$17,901,502 27	\$20,045,162 98
*Total interest as per table and note	\$13,028,062 44	\$14,324,836 48
†Total dividends as per above tables and note	\$12,926,593 80	\$15,409,071 01

\* Surplus. d Deficiency.

†Includes 47.171 in 1904 and 46.27 in 1905 miles of main track outside of state.

## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STREET SURFACE, ELEVATED AND UNDERGROUND RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Equipment.</i>		
Horses.....	4,443	3,643
Steam locomotives*.....	111	106
Electric locomotives.....	4	5
<i>Motor or Cable.</i>		
Box cars.....	6,091	6,737
Open cars.....	4,089	3,886
Combination box and open cars.....	642	557
Combination passenger and express cars..	30	31
Mail cars.....	10	13
Express, freight and other cars.....	429	531
Snow plows, sweepers, etc.....	376	402
<i>Without Motor.</i>		
Box cars.....	1,755	1,953
Open cars.....	525	646
Combination box and open cars.....		393
Express, freight and other cars.....	366	299
Snow plows, sweepers, etc.....	50	59
Total.....	14,363	15,507
Wheel or truck fenders.....	7,794	7,405
Interchangeable body fenders.....	8,278	8,540
Total.....	16,072	15,945
Number equipped with power brakes.....	3,105	4,181
<i>Miscellaneous Statistics.</i>		
Number of passengers carried, including transfers.....	1,628,401,126	1,717,423,451
Number of transfers.....	312,860,257	329,998,674
Tons of freight carried.....	633,674	829,291
Passenger car mileage.....	261,511,022	279,261,802
Freight and express car mileage.....	1,097,498	1,867,357
Mail car mileage.....	219,790	239,466
<i>Per passenger carried:</i>		
Gross earning from operation (cents)†.	4.06	4.12
Operating expenses (cents)†.....	2.29	2.34
Net earnings from operation (cents)...	1.77	1.78

\*Used on Brooklyn Union Elevated.

†Includes earnings and expenses of passengers, freight, mail, express and miscellaneous.



## COMPILATION FROM REPORTS OF RAILROAD COMPANIES.

## ROADS IN OPERATION.

*Comparative Statement for Years Ending June 30, 1904 and 1905.*

## STREET SURFACE, ELEVATED AND UNDERGROUND RAILROADS.

	For year ending June 30, 1904.	For year ending June 30, 1905.
<i>Miscellaneous Statistics—Continued.</i>		
<i>Per mile of road operated:</i>		
Capital stock outstanding.....	\$155,330 79	\$151,844 44
†Funded debt outstanding.....	†139,701 56	†144,653 17
†Cost of road and equipment.....	†282,139 59	†283,285 43
Gross earnings from operation.....	32,549 72	33,684 20
Operating expenses.....	18,325 42	19,142 51
Net earnings.....	14,224 30	14,541 69
Maintenance of way and structures...	1,441 26	1,662 60
Maintenance of equipment.....	2,250 82	2,678 18
Operation of power plant.....	2,973 70	3,201 55
Operation of cars.....	8,603 09	8,435 29
General expenses.....	3,056 55	3,164 89
Percentage of net income to capital stock*	4.66	4.41
Percentage of dividends declared to capital stock.....	4.09	4.83
Percentage of gross income to cost of road and equipment.....	5.58	5.66
Percentage of operating expenses to gross earnings from operation.....	56.30	56.83
Average number of employees during year.	38,427	41,699
Aggregate salaries and wages paid them...	\$23,721,992 80	\$27,651,598 86

\*As the cost of road and equipment, capital stock and debt of lessor companies are included with operating companies under these heads respectively, the income of such lessor companies should be included in any computations based on these accounts; therefore the percentage of net income to capital stock is computed on the following basis:

	June 30, 1904.	June 30, 1905.
Net income as herein above shown.....	\$4,137,613 86	\$3,047,266 94
Add portion of rentals used by lessors for dividends as before shown in note (dividends not being a fixed charge).....	10,575,789 84	11,015,270 97
Total net income of operating and lessor companies.....	\$14,713,403 70	\$14,062,537 91

†Not including cost of building subway or amount of bonds issued by New York city to pay for same.

It will be seen from the preceding table that the total gross earnings from operation of the street surface, elevated and subway railroads were \$70,730,085.66, which is an increase of \$4,577,655.07 over 1904. Operating expenses were \$40,195,443.54, which is an increase of \$2,951,769.72 over 1904. The figures for 1904, of course, do not include the subway. The percentage of dividends to capital stock of said companies is 4.83; in 1904 it was 4.09. The miles of said railroads operated increased 67.449 miles, including the subway. The number of passengers carried on the street surface

railroads in the Boroughs of Manhattan and the Bronx, New York city (including "transfers"), was 601,761,867, a decrease of 16,998,-191 compared with 1904. The number of transfers was 188,738,309. The number of transfers in these boroughs decreased 5,410,263. The average number of passengers carried on street surface railroads in the Boroughs of Manhattan and the Bronx per day (365 days) was 1,648,663 during 1905. These figures as to Manhattan and the Bronx include some passengers carried in Westchester county. The number of passengers carried in the Borough of Brooklyn (including transfers and including those carried on the elevated railroads) was 427,895,530. The number of transfers was 76,482,207. The average number carried per day (365 days) in the Borough of Brooklyn was 1,172,317. These include some carried in the Borough of Queens by the Brooklyn roads.

Following will be found tables giving percentages of operating expenses.

PERCENTAGES OF SUBDIVISIONS OF OPERATING EXPENSES TO GROSS EARNINGS FROM OPERATION FOR THE YEARS ENDING JUNE 30, 1904 AND 1905, OF STREET SURFACE ELEVATED AND SUBWAY RAILROADS.

	1904.	1905.
Maintenance of way and structures.....	4.42	4.93
Maintenance of equipment.....	6.91	7.95
Operation of power plant.....	9.15	9.50
Operation of cars.....	26.42	25.05
General expenses.....	9.40	9.40
	56.30	56.83

PERCENTAGES OF SUBDIVISIONS OF OPERATING EXPENSES TO TOTAL OPERATING EXPENSES FOR THE YEARS ENDING JUNE 30, 1904 AND 1905, OF STREET SURFACE ELEVATED AND SUBWAY RAILROADS.

	1904.	1905.
Maintenance of way and structures.....	7.87	8.70
Maintenance of equipment.....	12.28	13.99
Operation of power plant.....	16.23	16.70
Operation of cars.....	46.94	44.07
General expenses.....	16.68	16.54
	100.	100.

**PERCENTAGE OF OPERATING EXPENSES TO GROSS EARNINGS FROM  
OPERATION FOR TEN YEARS.**

1896.....	61.96
1897.....	60.57
1898.....	60.07
1899.....	59.62
1900*.....	58.78
1901*.....	56.89
1902*.....	58.91
1903*.....	57.70
1904†.....	56.30
1905†.....	56.83

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\* Including elevated roads in Brooklyn.

† Including elevated roads in Brooklyn and Manhattan and (in 1905) the Subway in Manhattan.

The following table gives statistics relative to the operation of some of the more important companies.

*Street Surface Railway (some principal companies) Receipts and Expenditures per passenger and cost of operation per car mile for year ending June 30 1906.*

OPERATED WHOLLY OR IN PART BY MECHANICAL TRACTION.

NAME OF ROAD.	Number of passengers carried, including transfers.	Total car mileage.	*BASED UPON GROSS EARNINGS FROM OPERATION AND OPERATING EXPENSES.			*BASED UPON RECEIPTS FROM ALL SOURCES AND TOTAL EXPENDITURES, INCLUDING FIXED CHARGES.			PER CAR MILE.		
			Average earnings per passenger.	Average cost of operation per passenger.	Average receipts per passenger.	Average expenses per passenger.	Cents.	Cents.	*Gross earnings.	*Operating expenses.	*Total expenses including fixed charges.
Albany and Hudson.....	1,354,169	704,050	14.18	11.28	17.93	17.61	Cents.	Cents.	26.57	22.62	33.87
Auburn and Syracuse.....	3,482,504	1,066,330	7.71	4.66	7.74	6.74			25.18	15.47	22.02
Binghamton.....	6,479,437	1,285,067	3.90	2.11	4.03	3.42			20.14	10.65	17.23
Brooklyn Heights.....	286,392,708	44,567,665	4.11	2.42	4.19	3.91			26.40	15.57	25.11
Coney Island and Brooklyn.....	38,842,527	6,629,843	5.18	2.99	4.13	3.74			24.13	17.53	21.79
Croastown Street (Buffalo).....	15,707,279	2,410,038	3.38	1.81	3.41	2.92			22.03	11.78	19.06
Forty-second St., M. & St. N. Ave. (N. Y. City).....	26,125,979	3,339,349	3.02	2.51	3.36	4.01			23.61	19.64	31.06
Geneva, Waterloo, Seneca Falls & C. L.....	1,785,940	465,912	4.65	2.95	4.84	4.11			17.08	10.84	15.11
Hudson Valley.....	5,955,891	1,927,473	8.38	5.92	8.01	9.84			25.89	17.36	30.40
International (Buffalo).....	89,785,647	14,682,630	4.12	2.24	4.23	3.21			25.16	13.71	20.16
Jamestown.....	4,015,872	870,554	3.78	2.39	3.82	3.31			17.46	11.05	15.28
Kingsford Consolidated.....	2,537,426	535,527	4.87	2.89	4.88	4.47			23.15	13.70	21.17
Nassau Electric.....	68,231,120	10,467,139	4.09	2.52	4.23	3.81			26.72	16.33	24.85
New York City.....	476,929,345	50,293,559	3.50	1.95	3.73	4.29			33.21	18.52	40.71
New York and Long Island.....	1,534,106	490,273	6.78	4.49	6.83	4.96			21.66	14.37	15.86
New York and Queens Co.....	18,319,217	3,263,185	4.02	2.43	4.07	3.53			22.54	13.64	19.82
Rochester.....	45,276,270	6,991,775	3.81	2.14	3.89	3.03			24.68	13.88	19.64
Rochester and Eastern.....	1,030,414	762,586	20.64	15.08	21.48	23.09			27.89	20.39	31.21
Schenectady.....	11,064,269	3,286,537	6.32	4.48	6.57	6.02			21.29	15.09	20.29
Syracuse and Suburban.....	1,771,075	453,820	5.20	2.95	5.23	4.82			20.29	11.51	18.82
Syracuse Rapid Transit.....	23,268,828	4,011,635	2.82	2.21	3.84	3.26			22.15	12.82	18.91
United Traction (Albany and Troy).....	34,206,367	8,035,896	5.01	3.19	5.06	4.21			21.34	13.61	17.81
Union and Newark Valley.....	14,649,423	3,389,069	5.43	3.55	5.45	4.77			23.46	15.37	20.60
Union (N. Y. City).....	44,929,958	6,197,621	3.08	2.17	3.12	2.76			22.36	15.75	19.98

\*Includes earnings and expenses of freight, express, mail and all other business. †Includes all lines operated by Brooklyn Heights not making separate reports. ‡Includes portion operated by horses. §Includes all lines operated by New York City Railway Company not making separate reports and also includes lines operated by horses.

Following is a table of accidents occurring on street surface railroads during the year ending June 30, 1905. Accidents in shops are not reported.

**TABLE OF ACCIDENTS on street surface railroads reported by separate reports to the Board of Railroad Commissioners, classified as to causes, for the year ending June 30, 1905.**

CAUSE OF ACCIDENT.	1905.						1904.									
	PASSENGERS.		EMPLOYEES.		OTHERS.		TOTAL.		PASSENGERS.		EMPLOYEES.		OTHERS.		TOTAL.	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
Fall from cars in motion.....	3	29	8	9	4	7	15	45	7	26	4	9	3	9	14	44
Getting on or off cars in motion.....	21	133	8	4	9	37	30	174	12	156	2	5	5	54	19	210
Walking on or being on track.....				7	118	217	128	224	1	1	10	4	94	181	105	168
Passing head or arms out of windows, or missiles thrown in windows.....																
Crossing tracks at street crossings.....					47	147	47	147		1			42	114	42	114
Derailments:																
By misplaced switch.....		6		2				8								9
From defect in track.....										9						
From unknown causes.....		42	2	2		1	2	45		34	1	2			1	36
Collisions:																
Head on, by neglect of order or signal.....		49	1	9				58		1		10			1	72
Rear, by neglect of order or signal.....	2	124	1	6		7	3	137		110		10		1		121
By misplaced switch.....		3						3								
At grade crossing of railroads.....	1	8	1	1			2	9		5						5
Other causes.....	3	42	8	31	3	6	14	79		3	62	11	36		14	100
	30	436	29	71	181	422	240	929	24	466	28	71	144	341	196	878
From causes beyond their own control.....	3	248	5	20	6	2	14	270		223	2	23		2	3	248
By their own misconduct or inattention.....	27	187	24	51	171	414	222	652		241	26	48		386	192	625
Reported as caused by intoxication.....		1			4	6	4	7		2				1	3	5
	30	436	29	71	181	422	240	929	24	466	28	71	144	341	196	878

The same statement is to be made as to not printing in this volume special reports by inspectors in relation to accidents on street surface and elevated railroads as has hereinbefore been made as to not printing special reports by inspectors as to steam railroad accidents.

The general recommendations as to the operation of street surface railroads made in the annual reports of this Board for several years are hereby renewed without repeating them, as these recommendations have been quite generally adopted.

The acquisition of electric railroads by interests connected with steam railroads, first noted last year, has continued during the year, the electric railroads acquired being city as well as interurban roads.

The following table shows increases and decreases in the street surface, elevated and subway railway mileage in the State during the year:

INCREASES.	
Binghamton.....	1.000
Brooklyn City.....	.208
Brooklyn, Queens County & Suburban.....	1.969
Chautauqua Traction.....	14.648
City of New York, Williamsburgh Bridge.....	1.623
Coney Island and Gravesend.....	.040
Hamburg.....	2.750
Interborough, lessee of Subway in New York City.....	16.960
International, Buffalo.....	.311
Nassau Electric, Brooklyn.....	.930
New York and Long Island Traction.....	5.843
Ocean Electric.....	.450
Olean.....	2.950
Oneonta, Cooperstown and Richfield Springs.....	12.170
Rockaway Electric.....	.180
Schenectady.....	1.690
Syracuse Rapid Transit.....	3.670
Tarrytown, White Plains and Mamaroneck.....	1.530
Union of New York City.....	.385
Westchester Electric.....	2.082
	<hr/>
	71.289
DECREASES.	
Brooklyn Union Elevated.....	1.250
Buffalo and Depew.....	.560
Hudson Valley.....	.250
New York City Railway Company and leased lines.....	.095
Rochester.....	.130
Rochester andodus Bay.....	.390
Rochester and Suburban.....	.176
Sea Cliff Inclined Cable.....	.090
	<hr/>
	2.941
Net increase.....	<hr/>
	68.348

A table in detail and total of street surface railroad mileage will be found in this volume.

The average number of persons, including officials, employed during the year ending June 30, 1905, on all the street railroads of the State (including street surface electric and horse railroads, the Brooklyn Union elevated railroad, the Manhattan elevated railway and the subway) was 41,699; in 1904, 38,427, not including

the subway. The aggregate amount of salaries and wages paid them during the year was \$27,651,598.86; in 1904, \$23,721,992.80. The percentage of gross earnings from operation paid in salaries and wages in 1905 was 39.09. The same companies owned and operated on June 30, 1905, 6,737 electric motor or cable box cars; 3,886 electric motor or cable open cars; 557 electric motor combination box and open cars; 31 electric motor combination passenger and baggage cars; 13 electric motor mail cars; 531 electric motor express, freight and other cars; 402 electric motor snowplows, sweepers and sprinklers; the total being 12,157; in 1904, the total was 11,667. 15,945 fenders were reported in 1905 as in use on cars. Some of these fenders are transferred from one end of the car to the other at terminals, and some of the devices reported as fenders are wheel guards. 3,350 other cars (being cars operated by horses, and box, open, freight, express, service cars and snowplows not equipped with motors) were also owned and operated on June 30, 1905.

The number of tons of freight reported as carried on the street surface railroads of the State during the year ending June 30, 1905, was 829,291; the number carried during each of the years beginning with the year 1899 was as follows:

1899.....	129,040
1900.....	153,343
1901.....	287,311
1902.....	394,641
1903.....	516,460
1904.....	633,674
1905.....	<u>829,291</u>

On some of the roads separate express companies operate, and in some of these cases the amount carried is not reported.

### General Business of the Board.

During the year there were considered and disposed of about the usual number of complaints and applications on various subjects, statements of the actions on which will be found in this volume under the appropriate titles. Proceedings under the grade crossing law, complaints as to operation of railroads, street surface particularly, complaints as to fences and stations, and applications of railroad companies under the various statutes, are frequent, but we receive few complaints as to passenger rates and fewer still as to freight rates. The complaints as to passenger rates are usually as to charges made by summer resort railroads and upon investigation the charges have been found to be within the statutory limits. The question of transfers on street surface railroads has been taken to the courts



under the statutes, in many instances. The few complaints as to freight rates are usually rectified. In one instance of complaint as to freight rates this year, in which the Board held a hearing, a proposition from the company looking toward removal of the cause of complaint was transmitted by the Board to complainant and nothing further was heard from him here.

During the year the Board held 269 public hearings and meetings.

Statements will be found in this volume of the action of courts in matters in which determinations by the Board were appealed.

### Conclusion.

The railroad business of the State, both steam and street, continues to be prosperous, as other business is, and it may be said, taking the State as a whole, that the accommodations afforded the public by the companies are generally such as the interests of the public demand. In New York and Brooklyn the operation of street surface and elevated railroads has been the subject of much criticism, and in these instances many recommendations of importance have been made by this Board and the recommendations have in most instances been complied with by the companies. The Board is continuing its investigation of these matters with the view of reducing, as far as practicable, causes of complaint.

All of which is respectfully submitted.

GEORGE W. DUNN,  
FRANK M. BAKER,  
JOSEPH M. DICKEY,  
GEORGE W. ALDRIDGE,  
HENRY N. ROCKWELL,

*Commissioners.*

## Ten Year Comparisons.

The following series of comparative tables, the figures of which are taken from the annual reports made by the Board for the years 1896 to 1905 inclusive, show the progress of steam railroad enterprise in this State during the past 10 years. It should be remembered that beginning with 1901 the figures include the entire system of the Boston and Maine Railroad and that those of 1902 include all of the Rutland Railroad Company's system for the first time.

TABLE SHOWING TOTAL ASSETS.

YEARS.	Cost of road and equipment.	Other permanent investments.	Cash and current assets.	Total assets.
1896.....	\$1,318,279,614	\$130,390,049	\$67,490,657	\$1,516,160,320
1897.....	1,337,926,708	143,097,876	62,694,176	1,543,718,760
1898.....	1,348,035,952	277,166,116	59,448,307	1,679,650,325
1899.....	1,337,536,656	304,569,940	68,633,051	1,710,739,647
1900.....	1,362,945,827	328,452,446	76,424,942	1,767,800,215
1901*.....	1,493,620,160	336,573,921	98,929,155	1,929,123,236
1902†.....	1,517,014,299	342,042,292	110,447,008	1,969,503,599
1903.....	1,552,173,802	385,657,529	122,356,105	2,060,187,436
1904.....	1,561,330,371	439,564,190	121,505,029	2,122,399,599
1905.....	1,604,005,329	456,665,373	151,790,182	2,212,460,884

TABLE SHOWING TOTAL LIABILITIES.

YEARS.	Capital stock.	Funded debt.	Unfunded debt.	Total liabilities.
1896.....	\$748,551,535	\$639,401,432	\$77,268,759	\$1,465,321,726
1897.....	751,790,390	668,099,618	75,979,885	1,495,859,893
1898.....	776,539,404	787,756,644	71,135,208	1,635,431,256
1899.....	785,516,804	799,742,027	76,130,042	1,661,388,872
1900.....	807,661,204	803,326,525	98,615,797	1,709,603,526
1901*.....	842,142,374	893,660,906	127,632,614	1,863,435,894
1902†.....	878,983,694	891,632,890	123,843,161	1,894,459,745
1903.....	899,543,728	905,362,391	169,584,142	1,974,490,261
1904.....	902,279,696	980,033,993	151,368,331	2,033,682,022
1905.....	913,489,999	1,044,987,719	161,710,376	2,120,188,094

TABLE SHOWING SURPLUS OF PROPERTY ACCOUNT.

YEARS.	Total assets.	Total liabilities.	Surplus.
1896.....	\$1,516,160,320	\$1,465,321,727	\$50,838,593
1897.....	1,543,718,760	1,495,859,893	47,858,867
1898.....	1,679,650,325	1,635,431,256	44,219,069
1899.....	1,710,739,647	1,661,388,872	49,350,774
1900.....	1,767,800,215	1,709,603,526	58,196,689
1901*.....	1,929,123,236	1,863,435,894	65,687,342
1902†.....	1,969,503,599	1,894,459,745	75,043,854
1903.....	2,060,187,436	1,974,490,261	85,697,175
1904.....	2,122,399,599	2,033,682,022	88,717,577
1905.....	2,212,460,884	2,120,188,094	92,272,790

\*Includes statistics of Boston and Maine Railroad for first time.

†Includes statistics of all of Rutland Railroad Company's system for first time.

TABLE SHOWING MAIN LINE AND TRACK MILEAGE.

YEARS.	Total miles of road main line operated.	Total miles of road main line in State of New York.	Miles of track operated.	Miles of track in State of New York.
1896.....	15,238	8,070	27,433	14,401
1897.....	15,188	8,114	27,487	14,735
1898.....	15,190	8,065	27,783	14,568
1899.....	15,280	8,075	27,801	14,833
1900.....	15,664	8,099	28,843	14,766
1901*.....	17,518	8,143	32,119	14,807
1902†.....	17,770	8,131	32,793	15,033
1903.....	17,956	8,222	33,366	15,290
1904.....	18,075	8,249	34,142	15,571
1905.....	18,325	8,254	35,005	15,950

TABLE SHOWING LOCOMOTIVE AND CAR EQUIPMENT.

YEARS.	Locomotives.	Passenger cars.	Baggage, mail and express cars.	Freight and other cars.
1896.....	6,264	5,981	1,568	245,374
1897.....	6,297	5,869	1,627	237,525
1898.....	6,271	5,900	1,658	233,043
1899.....	6,346	5,953	1,688	224,494
1900.....	6,499	5,879	1,729	245,501
1901*.....	7,464	7,091	2,100	266,112
1902†.....	7,784	7,083	2,218	277,453
1903.....	8,005	7,410	2,331	287,334
1904.....	8,390	7,926	2,293	290,898
1905.....	9,670	7,797	2,341	292,113

TABLE SHOWING AVERAGE NUMBER OF EMPLOYEES.

YEARS.	Number of employees.	YEARS.	Number of employees.
1896.....	146,987	1901*.....	184,854
1897.....	143,195	1902†.....	199,373
1898.....	140,992	1903.....	216,461
1899.....	150,061	1904.....	219,286
1900.....	159,155	1905.....	227,117

TABLE SHOWING OPERATING EXPENSES AND NET EARNINGS  
FROM OPERATION.

YEARS.	Gross earnings from operation.	Operating expenses.	Net earnings from operation.	Percentage of operating expenses to gross earn- ings from operation.
1896.....	\$210,089,592 75	\$146,063,417 77	\$64,026,174 98	69.52
1897.....	204,252,615 41	139,146,406 28	65,106,209 13	68.12
1898.....	214,050,214 51	146,555,719 71	67,494,494 80	68.47
1899.....	220,027,722 90	149,411,333 05	70,616,389 85	67.91
1900.....	247,087,779 28	166,228,978 79	80,858,800 49	67.27
1901*.....	276,676,101 88	190,375,619 27	86,300,482 61	68.80
1902†.....	293,347,453 06	204,775,365 21	88,572,087 85	69.80
1903.....	321,550,569 60	226,991,079 61	94,559,489 99	70.59
1904.....	334,434,456 34	240,186,437 37	94,248,018 97	71.82
1905.....	348,813,233 45	247,922,018 43	100,891,215 02	71.07

\*Includes statistics of Boston and Maine Railroad for first time.

†Includes statistics of all of Rutland Railroad Company's system for first time.

‡Includes second and other additional track, sidings and switches.

TABLE SHOWING INCOME FROM ALL SOURCES.

YEARS.	†Gross passenger earnings.	‡Gross freight earnings.	Income from other sources.	Gross income.
1896.....	\$71,091,846 43	\$138,997,746 32	\$7,132,210 88	\$217,221,803 63
1897.....	68,082,213 83	136,170,401 58	6,486,571 16	210,739,186 57
1898.....	69,199,529 85	144,850,684 66	9,021,144 67	223,071,359 18
1899.....	71,552,606 97	148,475,115 93	11,056,135 56	231,083,858 46
1900.....	77,363,840 29	169,723,938 99	10,894,351 64	257,982,130 92
1901*.....	91,109,809 60	185,566,292 28	13,153,015 10	289,829,116 98
1902†.....	102,041,124 06	191,306,329 00	16,085,453 14	309,432,906 20
1903.....	105,453,796 51	216,096,773 09	17,997,039 07	339,547,608 67
1904.....	108,996,231 48	225,438,224 86	18,965,293 10	353,399,749 44
1905.....	112,457,953 83	236,355,279 62	20,428,782 64	369,242,016 09

\*Includes statistics of Boston and Maine Railroad for first time.

†Includes statistics of all of Rutland Railroad Company's system for first time.

‡Includes mail, express and miscellaneous earnings.

§Includes miscellaneous earnings.

TABLE SHOWING GROSS EXPENDITURES AND NET SURPLUS.

Years.	Operating expenses.	Interest, taxes, rentals and miscellaneous.	Dividends and other payments from net income.	Gross expenditures.	Gross income.	Net surplus.	Percentage of gross expenditures to gross income.
1896.....	\$146,063,417 77	\$52,934,561 80	\$14,660,008 13	\$213,637,987 70	\$217,221,803 63	\$3,563,815 93	98.36
1897.....	139,146,406 28	54,621,496 61	14,405,089 79	208,172,982 68	210,739,186 57	2,566,203 89	98.77
1898.....	146,555,719 71	56,702,627 84	14,549,282 67	216,907,630 22	223,071,359 18	6,263,728 96	97.20
1899.....	149,411,333 05	58,477,845 55	16,132,965 58	223,022,144 18	231,083,858 46	8,061,714 28	96.51
1900.....	166,228,978 79	61,181,908 20	16,538,689 91	243,969,576 90	257,982,130 92	14,012,554 02	94.57
1901*.....	190,375,619 27	71,462,664 21	17,108,892 30	278,947,175 78	289,829,116 98	10,881,941 20	96.24
1902†.....	204,775,365 21	74,914,340 70	19,619,339 50	299,309,045 41	309,432,806 20	10,123,860 79	96.73
1903.....	226,991,079 61	77,305,722 98	21,024,932 41	325,321,755 00	339,547,608 67	14,225,853 67	95.81
1904.....	240,186,437 37	79,270,964 69	23,327,746 82	342,785,148 88	353,369,749 44	10,614,600 56	96.99
1905.....	247,922,018 43	82,533,225 38	24,605,706 39	355,060,950 20	369,242,016 09	14,181,065 89	96.16

\*Includes statistics of Boston and Maine Railroad for first time.

†Includes statistics of all of Rutland Railroad Company's system for first time

TABLE SHOWING DISTRIBUTION OF OPERATING EXPENSES PER MILE OF ROAD OPERATED.

YEARS.	Maintenance of way and structures.	Maintenance of equipment.	Conducting transportation.	General expenses.	Total cost of operation.
1896.....	\$1,673 02	\$1,755 43	\$5,820 69	\$336 32	\$9,585 46
1897.....	1,597 34	1,566 47	5,653 26	346 36	9,161 43
1898.....	1,620 33	1,750 74	5,937 79	345 10	9,653 96
1899.....	1,670 67	1,788 57	5,972 70	346 29	9,778 23
1900.....	1,984 65	2,084 54	6,187 58	355 24	10,612 01
1901*.....	2,045 35	2,100 65	6,345 63	375 86	10,867 39
1902†.....	2,248 54	2,323 69	6,563 27	387 80	11,523 30
1903.....	2,430 37	2,259 84	7,509 15	392 09	12,641 45
1904.....	2,346 77	2,562 84	7,948 38	430 03	13,288 02
1905.....	2,395 22	2,713 56	7,971 40	448 65	13,528 83

TABLE SHOWING DIVIDENDS PAID AND PERCENTAGE OF DIVIDENDS TO CAPITAL STOCK.

YEARS.	Capital stock.	Net income.	Dividends paid from net income.	Dividends paid lessor companies as part of rentals.	Total dividends paid.	Percentage of dividends to capital stock.
1896....	\$748,551,535 10	\$18,223,824 06	\$14,557,454 00	\$4,113,780 53	\$18,671,234 53	2.49
1897....	751,780,390 10	16,971,293 68	14,323,464 22	4,105,425 82	18,428,890 04	2.45
1898....	776,539,404 03	20,813,011 63	14,546,582 67	4,044,738 58	18,591,321 25	2.39
1899....	785,516,804 03	23,194,679 86	15,085,978 50	4,040,035 65	19,126,014 15	2.43
1900....	807,661,204 03	30,571,243 93	16,247,282 25	4,087,400 67	20,334,682 92	2.52
1901*....	842,142,374 73	27,990,833 50	16,608,614 25	7,144,434 92	23,753,049 17	2.82
1902†....	878,983,694 22	29,743,200 29	18,975,339 50	7,341,222 29	26,316,561 79	2.99
1903....	899,543,728 63	35,250,803 08	20,116,218 25	7,537,260 31	27,653,478 56	3.08
1904....	902,279,698 63	33,942,347 38	23,327,746 82	7,530,325 28	30,858,072 10	3.42
1905....	913,489,998 63	38,786,772 28	24,289,419 00	7,776,762 13	32,066,181 13	3.51

\*Includes statistics of Boston and Maine Railroad for first time.

†Includes statistics of all of Rutland Railroad Company's system for first time.

TABLE SHOWING PASSENGER AND FREIGHT TRAIN MILEAGE, NUMBER OF PASSENGERS AND TONS OF FREIGHT CARRIED AND NET EARNINGS PER MILE OF ROAD OPERATED.

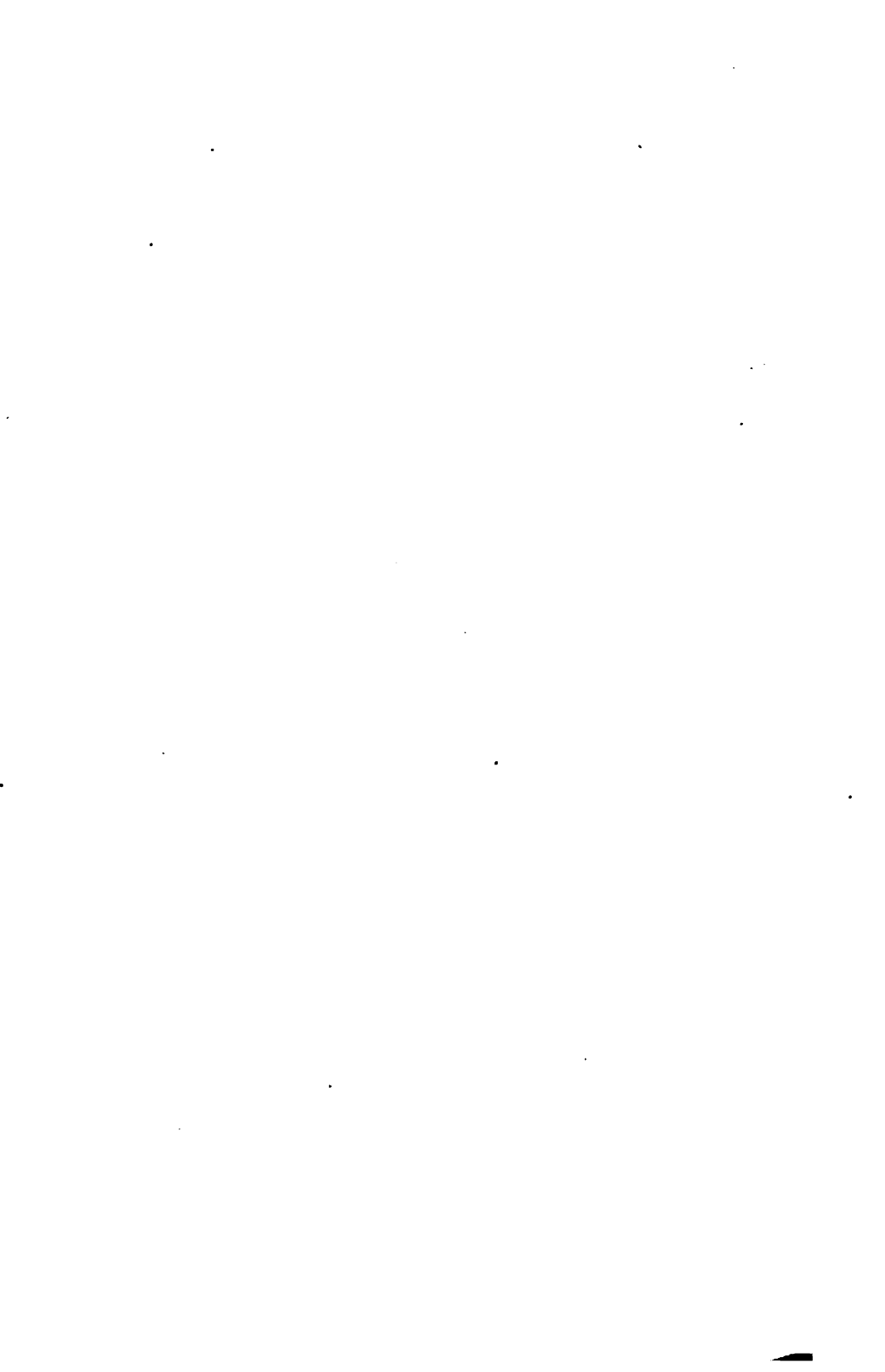
Years.	Passenger train mileage.	Freight train mileage.	All other train mileage.	Number of passengers carried.	Tons of freight carried.	Passenger profit per mile of road operated.	Freight profit per mile of road operated.	Gross earnings from operation per mile of road operated.	Operating expense per mile of road operated.	Net earnings per mile of road operated.
1896	64,494,568	84,143,407	35,244,360	179,315,449	149,587,572	\$1,204.49	\$2,987.25	\$13,787.21	\$9,585.47	\$4,201.74
1897	64,068,346	83,694,514	34,076,440	170,274,403	140,821,869	1,086.76	3,180.85	13,448.04	9,161.43	4,286.61
1898	63,949,314	82,201,969	29,632,884	148,233,269	138,561,837	1,036.83	3,409.94	14,099.98	9,583.96	4,516.02
1899	60,967,043	82,712,288	33,880,851	146,243,854	139,522,630	1,087.68	2,953.86	15,399.02	9,418.25	5,980.77
1900	70,197,632	86,734,883	31,566,244	190,358,849	167,044,889	1,046.19	3,863.29	15,763.77	10,862.30	4,901.47
1901	70,197,632	86,734,883	31,566,244	190,358,849	167,044,889	1,046.19	3,863.29	15,763.77	10,862.30	4,901.47
1902	83,440,822	78,197,420	43,686,441	209,498,473	205,050,153	1,217.78	3,796.43	18,103.51	11,523.80	6,579.71
1903	83,104,822	81,889,009	47,282,468	231,158,529	217,015,048	1,604.62	3,295.23	19,007.60	12,641.45	6,366.15
1904	87,053,344	83,234,657	45,519,846	238,782,428	227,559,438	983.47	4,240.70	19,502.18	13,283.02	6,219.16
1905	87,508,132	84,218,700	45,460,629	229,889,356	241,429,231	859.68	4,645.84	19,034.36	13,528.88	5,505.48

TABLE SHOWING RESULTS OF PASSENGER TRAFFIC PER PASSENGER PER MILE AND OF FREIGHT TRAFFIC PER TON PER MILE WITH PERCENTAGES.

Years.	PASSENGER EARNINGS AND EXPENSES PER PASSENGER PER MILE.			FREIGHT EARNINGS AND EXPENSES PER TON PER MILE.		
	Earnings (cents).	Expenses (cents).	Profits (cents).	Earnings (cents).	Expenses (cents).	Profits (cents).
1896	2.22	1.65	.57	.701	.471	.230
1897	2.23	1.68	.55	.709	.457	.252
1898	2.20	1.70	.50	.665	.428	.237
1899	2.17	1.68	.49	.633	.401	.232
1900	2.17	1.76	.41	.646	.394	.253
1901	2.12	1.70	.42	.679	.430	.249
1902	2.06	1.64	.44	.699	.455	.244
1903	2.14	1.78	.36	.711	.493	.218
1904	2.15	1.81	.34	.721	.481	.240
1905	2.14	1.84	.30	.721	.461	.260
1896						67.14
1897						64.52
1898						64.26
1899						63.33
1900						61.01
1901						63.31
1902						66.01
1903						64.53
1904						64.19
1905						63.98



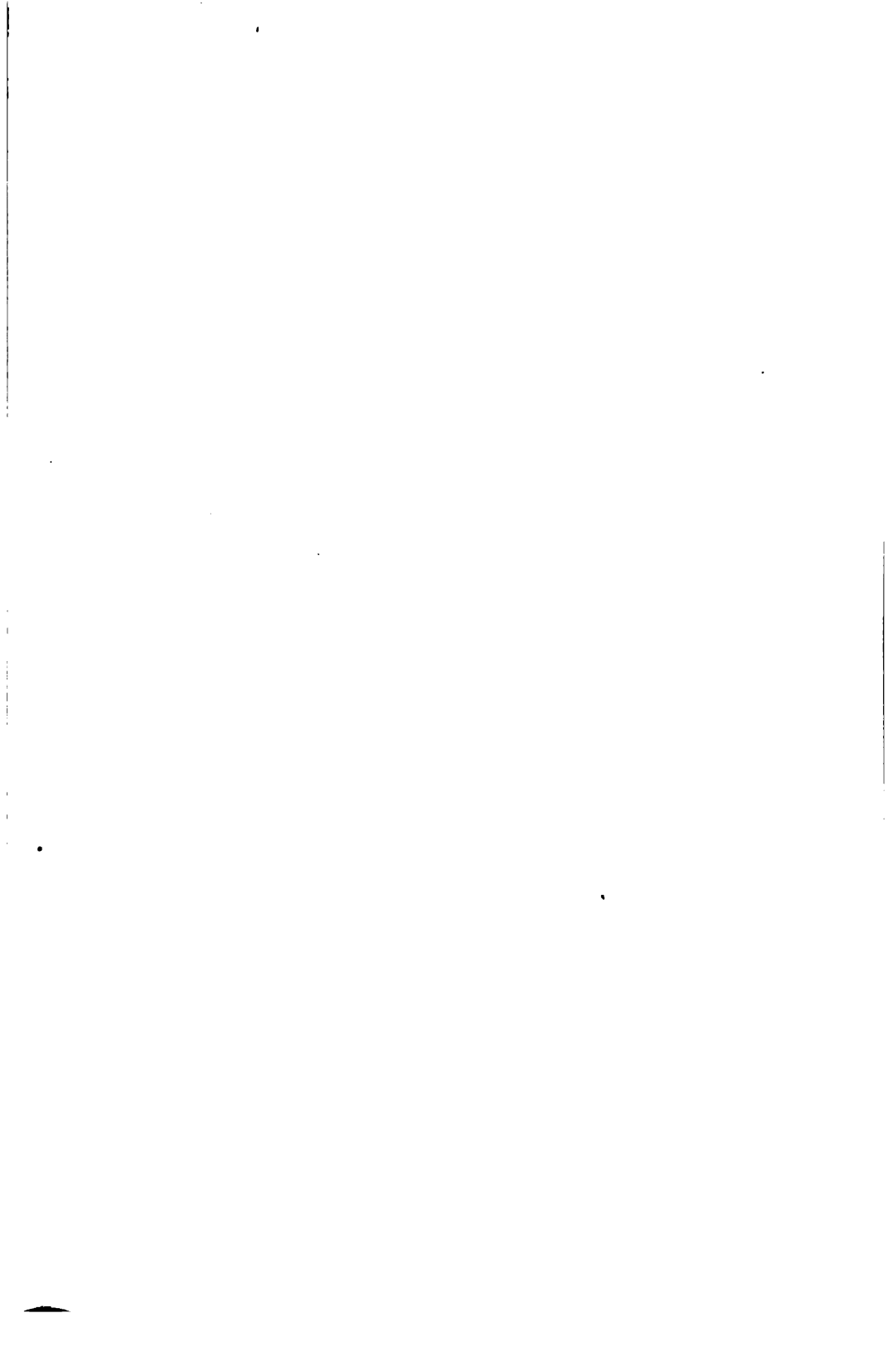


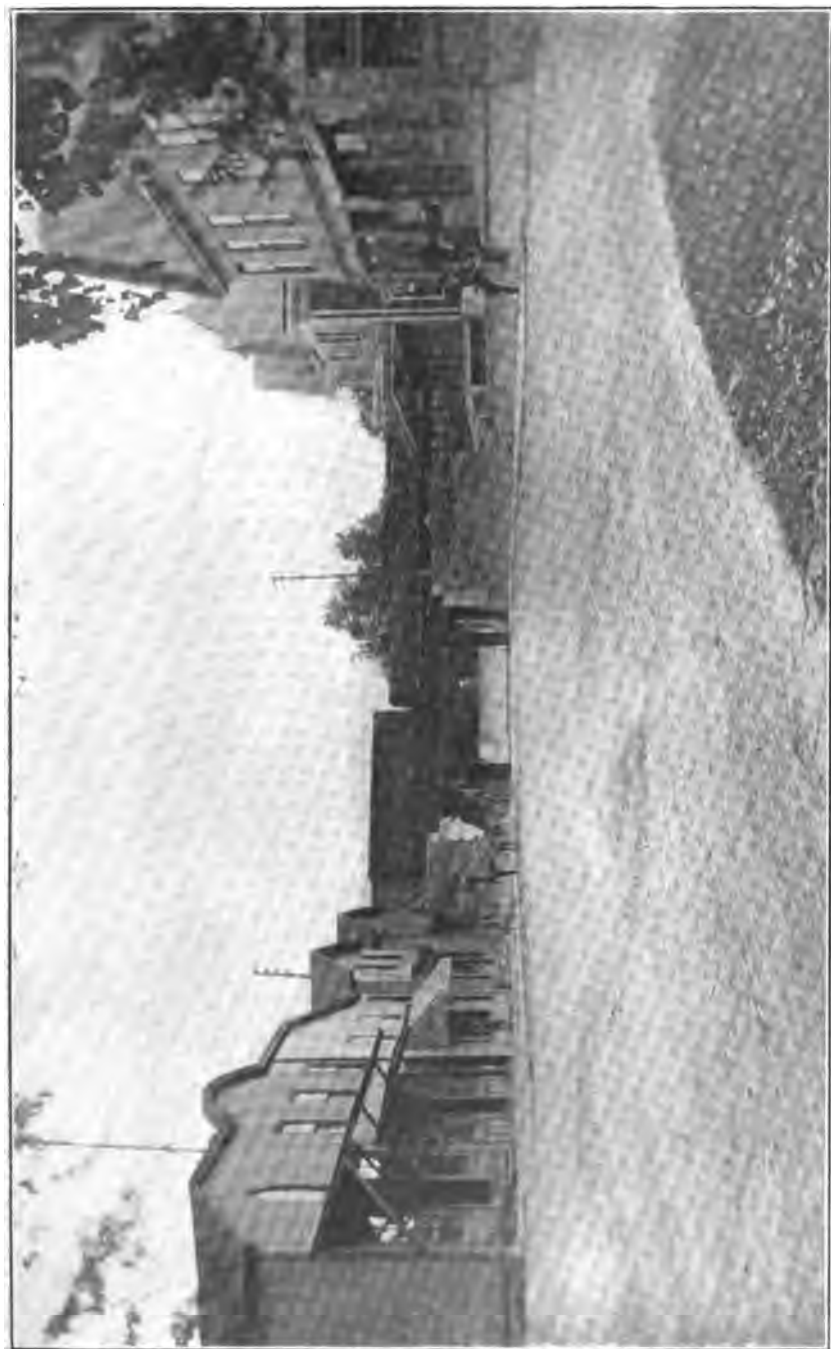




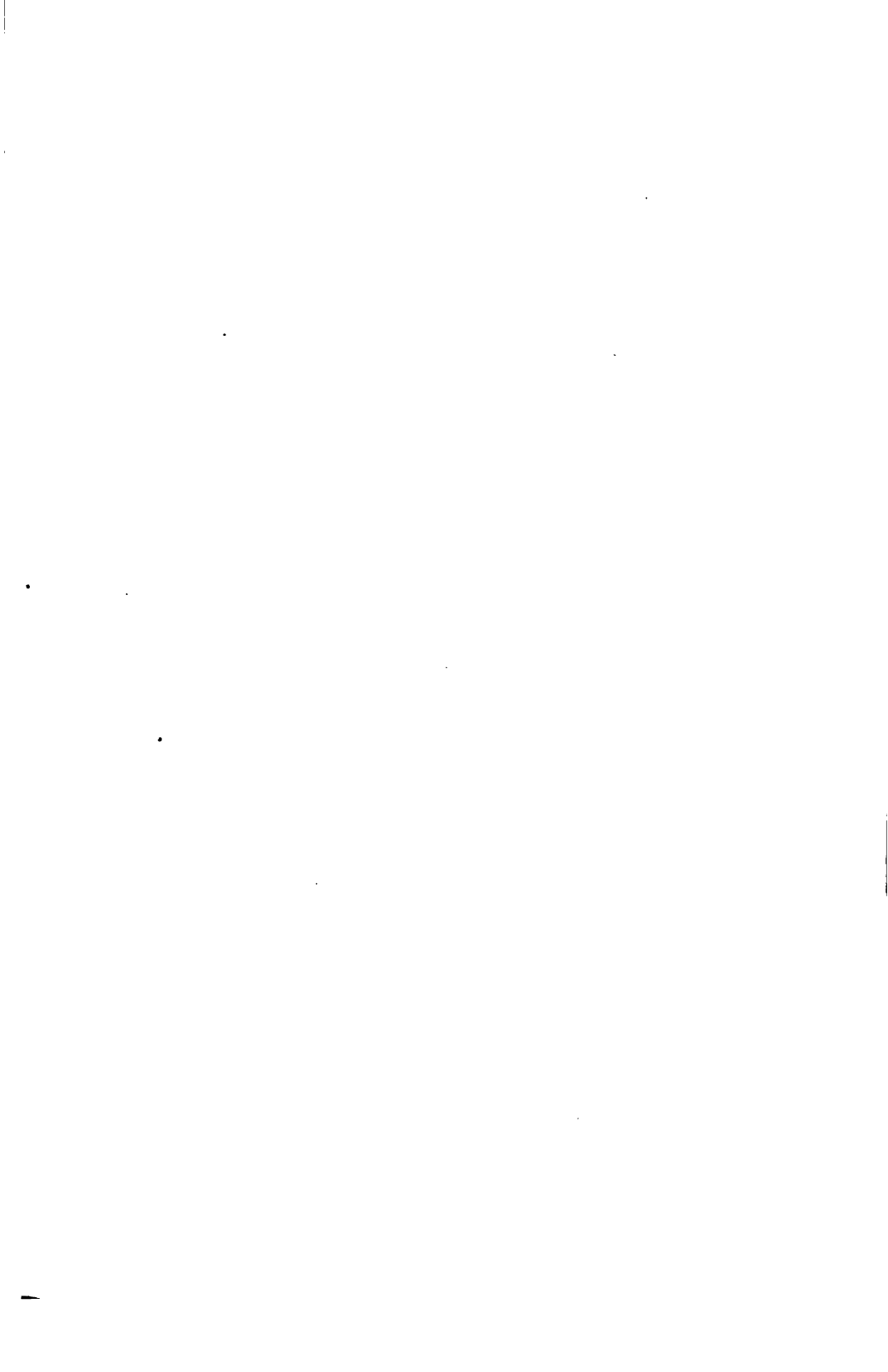
# PHOTOGRAPHS.

A few of the Structures erected in the Elimination  
of Certain Grade Crossings.



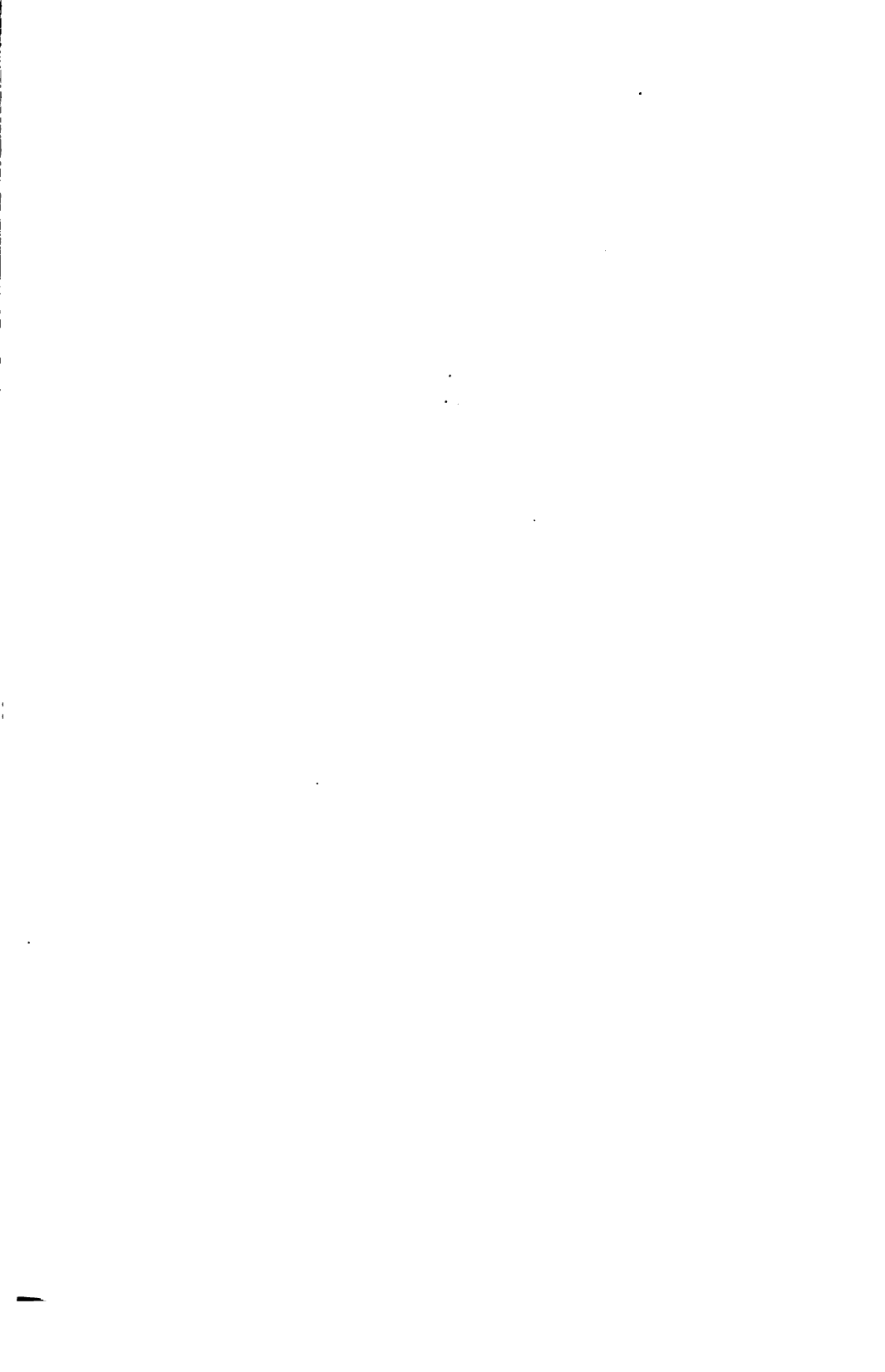


Town of Byron, Genesee County—View of completed undergrade crossing at location of former grade crossing of five tracks of the N. Y. C. & H. R. R. R. By means of this structure and a connecting highway, two crossings at grade were abolished.

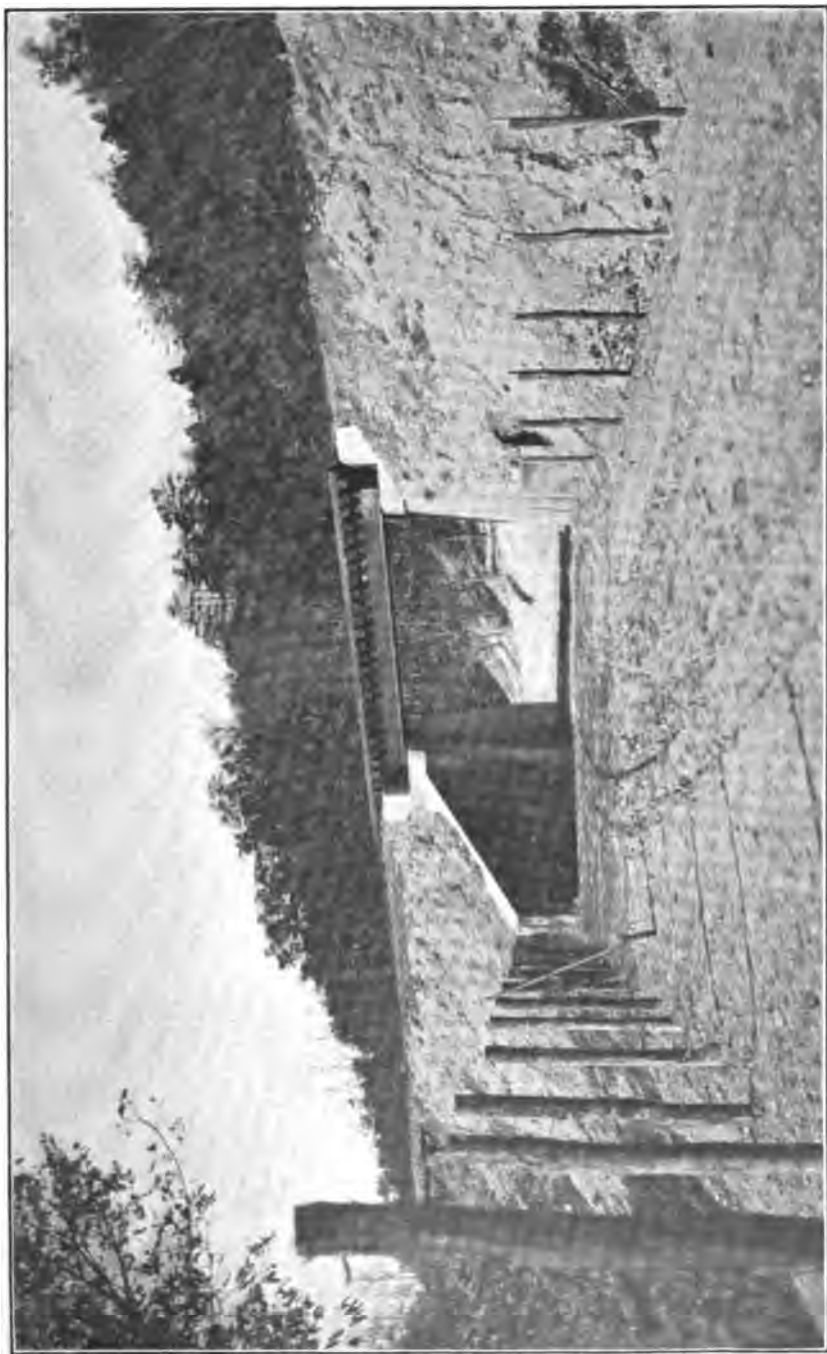




Town of Genesee, Allegany County.—New undergrade crossing of the P. S. & N. R. R. at location of former grade crossing. The disturbed condition of the depressed highway was caused by the construction of an electric railroad through the subway.





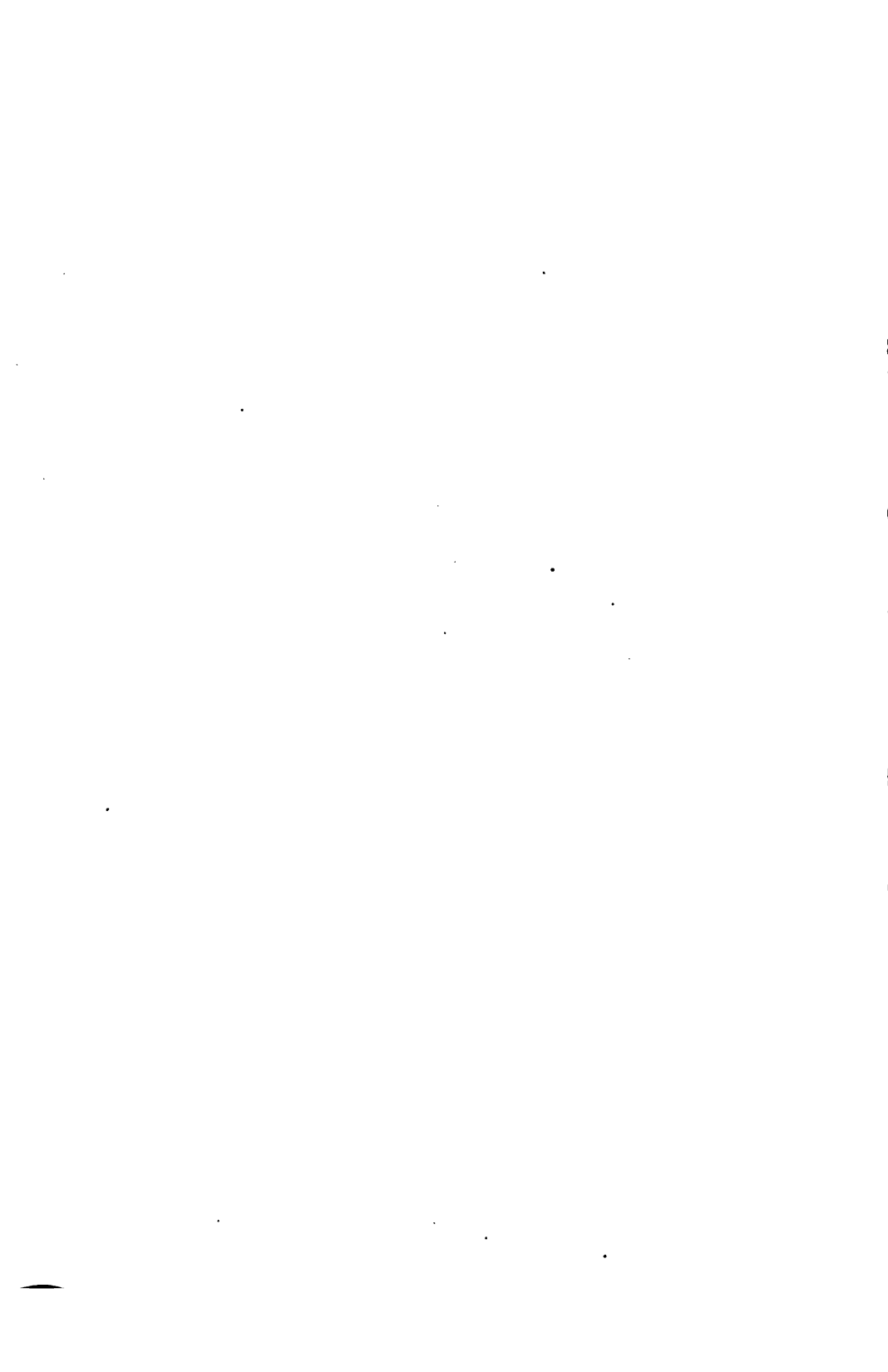


Town of Huntington, Long Island—View of completed undergrade crossing of the L. I. R. R. The old grade crossing, now closed, crossed several hundred feet south of this structure.





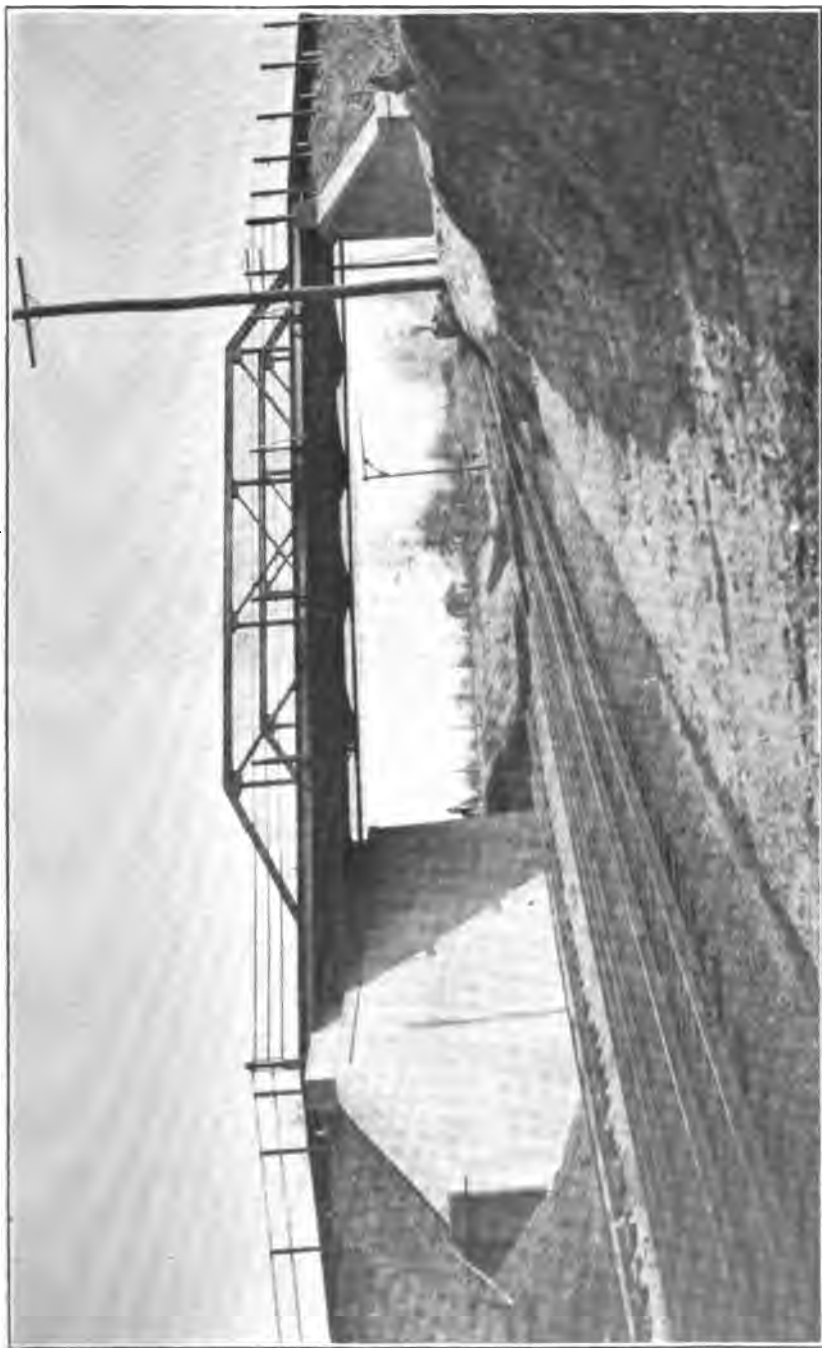
Town of Great Valley, Cattaraugus County—Undergrade crossing of the B., R. & P. R. R. By means of this structure two grade crossings were eliminated.



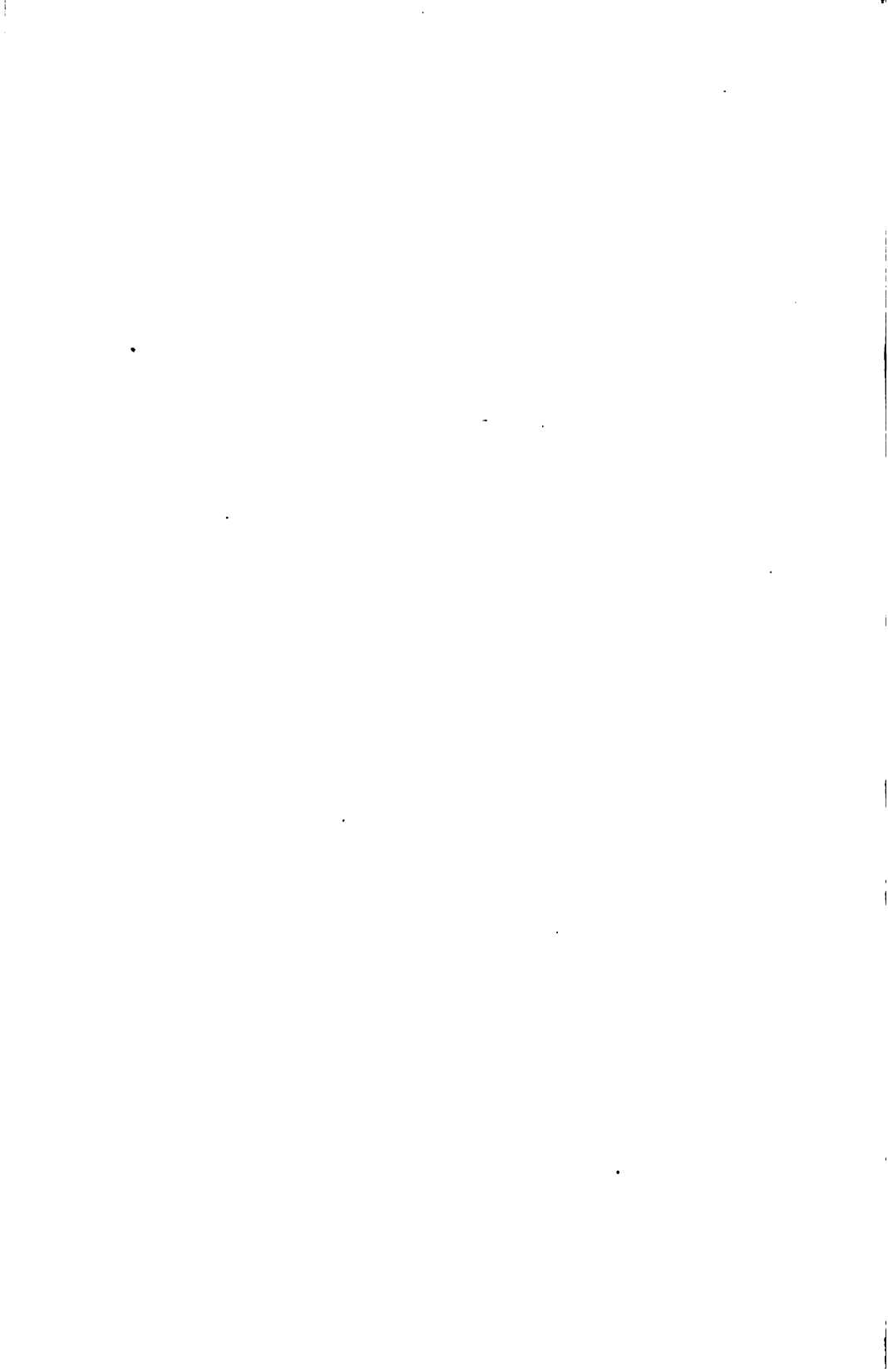


Town of Portland, Chautauqua County—Completed overgrade crossing of the Main Road and the Pennsylvania R. R. The Main Road formerly crossed at grade.





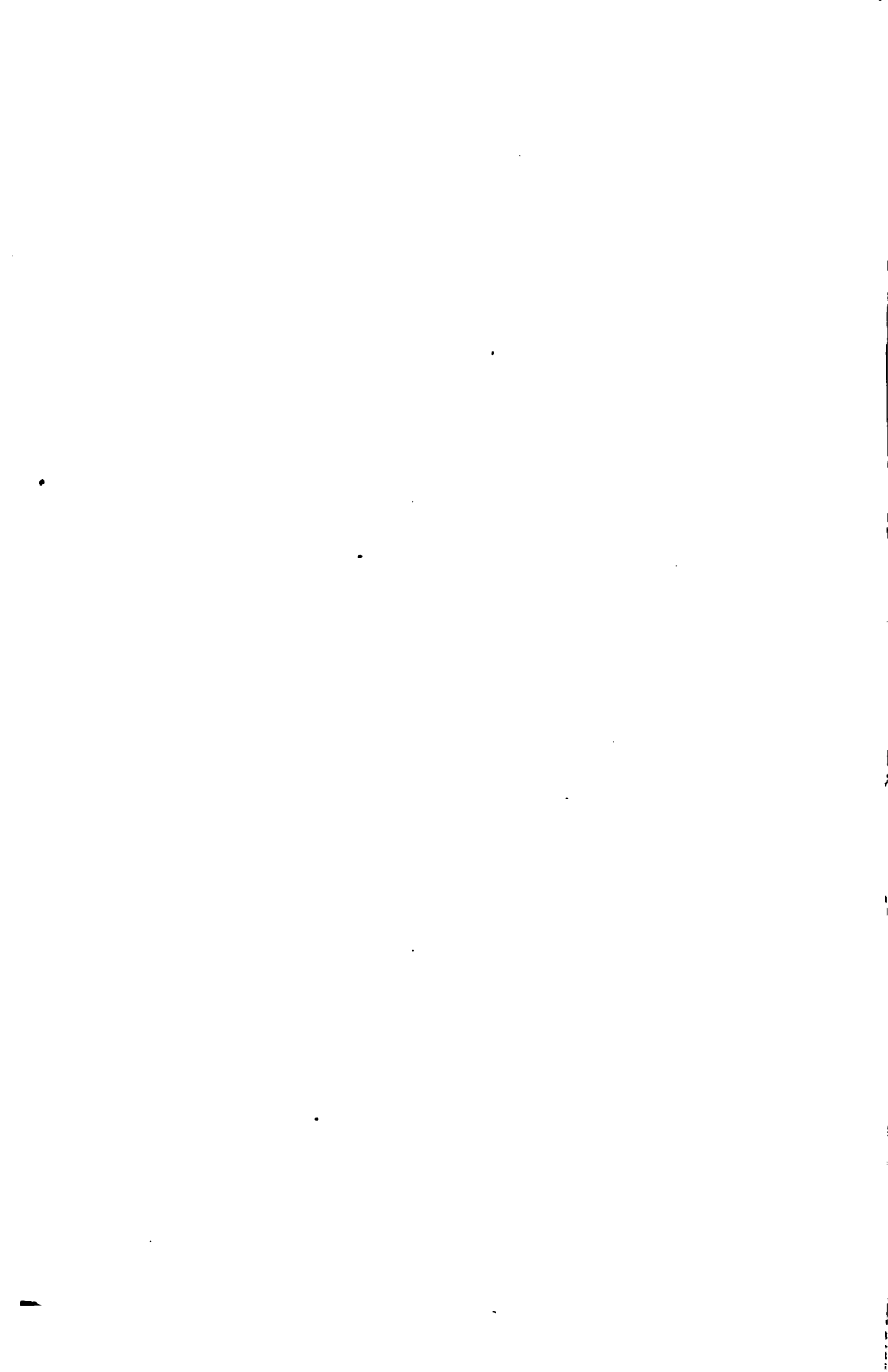
Town of North Hempstead, Long Island—New crossing by the Jerusalem road over the L. I. R. R. This was formerly a grade crossing.





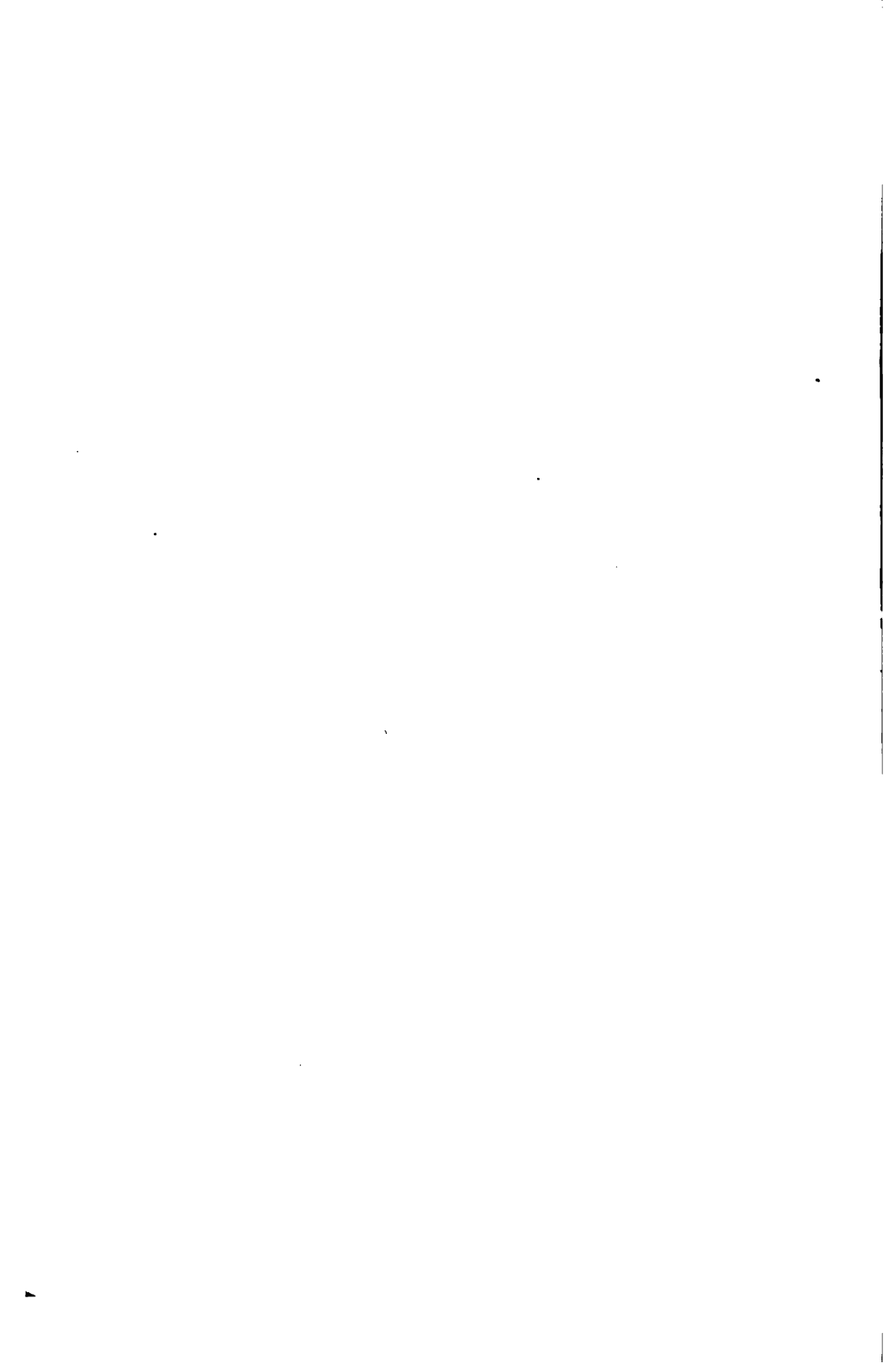


Town of Riverhead, Long Island—Completed undergrade crossing by the L. I. R. R. This structure replaces a former grade crossing.





Town of Coeymans, Albany County—View of completed undergrade crossing by the Westerlo Turnpike of the West Shore R. R. (N. Y. C. & H. R. R. R.).  
A grade crossing was formerly located at this crossing point.



## APPENDIX.

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### Decisions and recommendations:

Complaints of cities, towns, associations, individuals, etc.

Stations and station buildings.

Crossings.

Decisions of courts as to questions arising under the Grade Crossing Law.

Highway crossing signs on railroads.

Applications for change of motive power.

Applications for increase of capital stock.

Applications for consent to the issue of mortgages.

Applications for a certificate under section 59 of the Railroad Law.

Decisions of courts as to questions arising under section 59 of the Railroad Law.

Abandonment of part of route.

Change of name.

Cessation of operation during winter.

Application for approval of cooking ranges in cars.

Accidents.

Length of steam roads.

Length of elevated, underground and street roads.

Inspections.

Minutes of Board.

Unfinished business.

Companies formed.

Companies consolidated.

Certificate under section 59 of the Railroad Law, filed in the Secretary of State's office.

Extension of route.

Companies reorganized.

Leased roads.

Increase of capital stock.

Classification of stock.

Change of route.

Change of place of business.

Reduction of number of directors.

Increase of number of directors.

Certificate of abandonment of part of route

Certificate of merger.

Annulment of lease.

Certificate in respect of routes.

Acquisition of stock.

Consent of stockholders to issue preferred stock.

Enactments.

Alphabetical list of all companies formed under the laws of this State.

Rules of procedure.

Traveling expenses of the Board.

## LAWS—PART II.

"Condemnation Law."

"To Change the Name of a Corporation."

"General Corporation Law."

"Stock Corporation Law."

"Railroad Law."

Grade Crossing Law—sections 60 to 69, Railroad Law.

Sections of the Constitution relating to railroads.

General acts relating to railroads not embraced in the above laws.

Tax laws relating to railroads.

Bonding of towns, and railroad aid debts.

Extracts from Code of Criminal Procedure.

Extracts from Penal Code.

Rapid Transit Act (act of 1891 as amended).

Interstate Commerce Act (as amended).

# DECISIONS AND RECOMMENDATIONS.

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## Complaints of Cities, Towns, Associations, Individuals, Etc.

### I.

IN THE MATTER OF THE PETITION OF S. D. MILLER AND OTHER RESIDENTS OF  
RENSSELAER AGAINST THE UNITED TRACTION COMPANY AND THE COHOES  
CITY RAILWAY COMPANY.

December 14, 1904.

This petition, by S. D. Miller and other residents of Rensselaer, constituting a special committee of the Chamber of Commerce of that city, was filed with this Board on December 12, 1904. It alleged that the United Traction Company proposed to lease or transfer all the rights, properties and franchises of said company in Rensselaer to the Cohoes City Railway, and asked that " \* \* \* the said United Traction Company be cited to appear before your honorable body and show cause why they should not be restrained from making, or suffering the proposed lease or transfer to be made. \* \* \* " The petitioners were informed that this Board had no jurisdiction in the matter, and the case was closed. (Case No. 3266.)

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### II.

IN THE MATTER OF THE COMPLAINT OF WINANT V. P. BRADLEY AGAINST THE  
BROOKLYN HEIGHTS RAILROAD COMPANY, RELATIVE TO THE OPERATION OF  
PASSENGER CARS ON THE REID AVENUE LINE OF SAID COMPANY'S RAILROAD.

January 3, 1905.

This complaint, by Winant V. P. Bradley, of Brooklyn, against The Brooklyn Heights Railroad Company, was filed with this Board on November 3, 1904. It alleged that on the Reid avenue line of said company's railroad cars were operated at insufficient intervals. A copy of the complaint was sent to the company, which answered. A report in the matter was made by the electrical expert of this Board, from which it appeared that the intervals between cars on this line had been considerably shortened since the making of the complaint. The case was closed. (Case No. 3243.)

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### III.

IN THE MATTER OF THE COMPLAINT OF THE TWENTY-EIGHTH WARD BOARD OF  
TRADE OF BROOKLYN AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY  
AS TO SERVICE RENDERED THE PUBLIC BY SAID COMPANY.

January 3, 1905.

This complaint, by the Twenty-eighth Ward Board of Trade of Brooklyn, against The Brooklyn Heights Railroad Company, was filed with this Board on November 19, 1904. It alleged that cars on the Broadway surface lines and the Lexington avenue elevated line of said company were greatly over-

## COMPLAINTS.

crowded, and asked that the station platforms on the elevated line be lengthened. A copy of the complaint was sent to the company, which answered. A report in this matter was made by the electrical expert of this Board, and there was a conference between representatives of complainants and the company as to the matters complained of. Additional trips were instituted and the station platforms on the Lexington avenue elevated line were lengthened. The case was closed. (Case No. 3254.)

## IV.

IN THE MATTER OF THE COMPLAINT OF L. J. DOLAN, TOWN CLERK, AS TO BRIDGE SPANNING THE HUDSON RIVER.

January 3, 1905.

This complaint, by L. J. Dolan, clerk of the town of Moreau, Saratoga county, was filed with this Board on November 12, 1903. It stated that a highway bridge in said town, crossing the Hudson river and used by cars of the Hudson Valley Railway Company, was said to be in an unsafe condition, and asked this Board to have the bridge inspected. A civil engineer regularly employed by this Board inspected the bridge, and reported that it was unsafe for the operation of such cars, and this Board notified the company to cease operating cars over it. A new bridge was constructed in its place, as to which two reports were made by the same civil engineer, the last report being to the effect that the bridge " \* \* \* appears to be in good condition physically, and to be safely carrying all the loads imposed upon it. This bridge carries one track of the Hudson Valley Railway. \* \* \* " The case was closed. (Case No. 3034.)

## V.

IN THE MATTER OF THE COMPLAINT OF THE ALLIED BOARDS OF TRADE AND TAXPAYERS' ASSOCIATION OF BROOKLYN AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AND THE BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, AS TO SERVICE RENDERED THE PUBLIC BY SAID COMPANIES.

January 3, 1905.

This complaint, by the Allied Boards of Trade and Taxpayers' Association of Brooklyn against The Brooklyn Heights Railroad Company and the Brooklyn, Queens County and Suburban Railroad Company, was filed with this Board on November 23, 1904. It alleged that the service rendered the public by said companies on the Broadway and other surface lines and on the Broadway and other elevated lines was not adequate. A copy of the complaint was sent to the company, which answered. A report in the matter was made by the electrical expert of this Board, who was present at a conference between representatives of complainants and the companies. The complainants informed this Board that " \* \* \* The conference \* \* \* was held and the company agreed to shorten the headway on the Broadway and Reid avenue lines, and make such other concessions as would tend to better the service. \* \* \* " The case was closed. (Case No. 3256.)

## VI.

IN THE MATTER OF THE COMPLAINT OF JAMES J. LAWLESS AGAINST THE BUFFALO SOUTHERN RAILWAY COMPANY AS TO NONOPERATION OF CARS.

February 8, 1905.

This complaint, by James J. Lawless, of Buffalo, against the Buffalo Southern Railway Company, was filed with this Board on January 14, 1905.



It alleged that " \* \* \* The Buffalo Southern Railway, operating between Buffalo and the village of Hamburg and Orchard Park, has not run any cars over the entire line since Saturday the 7th inst. \* \* \*" (January). A copy of the complaint was sent to the company, which answered that the weather and accidents had caused the cessation of operation complained of, but that operation had been resumed. The complainant also informed this Board that operation had been resumed. The case was closed. (Case No. 3285.)

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VII.

IN THE MATTER OF THE COMPLAINT OF W. C. COLEMAN COMPANY AGAINST THE LONG ISLAND RAILROAD COMPANY AS TO RECEIPTING FOR FREIGHT.

February 8, 1905.

This complaint, by W. C. Coleman Company against the Long Island Railroad Company was filed with this Board on December 29, 1904. It alleged that the agent of the company at Setauket compelled complainants to sign for freight before seeing the freight. A copy of the complaint was sent to the company, which answered that, " \* \* \* W. C. Coleman has never been refused the opportunity of seeing his freight, nor requested to sign for same before he has seen it, nor refused the right to note on receipt the condition freight was in when delivered. \* \* \* I now have in my freight house a barrel of scrap rubber which he opened and looked at; have also a receipt in my books which he made a notation on. \* \* \* This party who represents himself as W. C. Coleman & Co. came here and wished part of his goods and demanded that I make delivery to him before he would sign for same. I told him I had to have his signature before I would deliver. He then went out and gave a man an order to get the goods, who signed for them and took them." A copy of the answer was sent to complainant, who did not reply. The case was closed. (Case No. 3272.)

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VIII.

IN THE MATTER OF THE COMPLAINT OF THOMAS A. NEWELL AGAINST THE CITY ISLAND AND PELHAM PARK RAILROAD COMPANIES AS TO RATE OF FARE CHARGED.

February 8, 1905.

This complaint, by Thomas A. Newell, of Van Nest, New York city, against the City Island and Pelham Park Railroad Companies, was filed with this Board on August 4, 1904. It complained of the practice of these companies charging a total fare of ten cents, five cents for each road, although, the complaint alleged, the two roads are operated as one, and are entirely within the city of New York. This case was closed; it is involved in the case following. (Case No. 3198.)

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IX.

IN THE MATTER OF THE COMPLAINTS OF A. V. PETERSON AND JAMES H. NORRIS AGAINST THE CITY ISLAND AND PELHAM PARK RAILROAD COMPANIES AS TO RATE OF FARE CHARGED.

February 8, 1905.

These complaints, by A. V. Peterson and James H. Norris, of New York city, against the City Island and Pelham Park Railroad Companies were filed with this Board on May 20, 1904. They alleged that these two roads, although connected and operated as one, charge two fares of five cents each,

and that disputes arose as to the point at which the first fare charged should terminate and the second begin. A hearing in the matter was held by this Board in New York city on October 25, 1904, at which Mr. Peterson appeared, and the companies were represented by counsel. The railroads were measured by a civil engineer employed in this department, who reported. Copies of this report was sent to complainants, and the case closed. (Case No. 3150.)

## X.

IN THE MATTER OF COMPLAINTS AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO SERVICE RENDERED THE PUBLIC BY THAT COMPANY ON THE STREET SURFACE AND ELEVATED RAILROAD LINES OPERATED BY IT. .

Determination. February 9, 1905.

The following recommendations of this Board are the result of investigations made by it, including three public hearings in Brooklyn and one in New York (on the Poulson bridge plan referred to hereinafter), of complaints against the Brooklyn Heights Railroad Company, as to service rendered the public by that company in the operation of its street surface and elevated railroad lines. Before stating the recommendations, we think it proper that we should comment on the general situation with respect to passenger traffic between Brooklyn and Manhattan.

In our opinion, permanent relief can best be obtained through building several tunnels connecting the boroughs. These should be commenced at the earliest possible moment and pressed to speedy completion. We are of the opinion that the quickest and best plan of relieving the present congested condition is to connect the Brooklyn and Williamsburg bridges by an elevated structure, with ample platforms for the prompt loading and unloading of passengers; the trains to be run continuously in both directions, thereby at least doubling the present capacity of the bridges to handle trains. From this structure a connection can be made with Manhattan bridge when completed, and in this connection it is proper to say that work on the Manhattan bridge should be accelerated.

The board of estimate and apportionment has adopted a plan (suggested by Bridge Commissioner Best and Chief Engineer Nichols) for the reconstruction of the Manhattan terminal of the Brooklyn bridge, which will, in part, relieve present conditions.

It being well understood that all the space at the Manhattan terminus of the Brooklyn bridge is not utilized to the fullest extent, several plans to remedy this condition were suggested to the Board. One, originated by Mr. Neils Poulson, has attracted much attention, and has been favorably received and endorsed by representatives of various influential bodies of citizens. We, therefore, concluded to give it a thorough investigation, and requested the companies operating the principal railroads running into New York city to send their terminal experts to a public hearing before the Board in relation to this plan so that they might, in connection with our own experts, examine and report upon its practicability. At such hearing W. J. Wilgus, fifth vice-president (in charge of engineering work) of the New York Central and Hudson River Railroad Company; J. C. Stuart, general manager of the Erie Railroad Company, and C. L. Addison, general superintendent of the Long Island Railroad Company, appeared and considered the plan, and while not expressing a final conclusion, through lack of time to consider it, this Board decided from their comments that it did not meet with the approval of those gentlemen. Mr. John Cade, with 25 years experience as a switch and signal engineer, discussed the plan in detail, and stated that, in his opinion, it would result in creating at least six danger points. Engineer Nichols of the bridge department called attention to the fact that practically the same thing is in operation at the Culver station at Coney Island, and permits of but 40 train movements per hour, whereas the present operation on the bridge per-

mits of more than 60 train movements per hour. The experts of this Board do not believe that the plan is a practicable or safe one, and do believe that the putting it in operation at the Brooklyn bridge terminal would result in a chaotic condition of affairs.

This Board believes that, notwithstanding the difficulties encountered by the Brooklyn Heights Railroad Company because of the condition of terminal facilities at the Manhattan end of the Brooklyn bridge, and in operating across the Williamsburg bridge, it is possible to materially improve present conditions.

We, therefore, hereby recommend to the Brooklyn Heights Railroad Company, in order to promote the convenience and accommodation of the public in respect to the elevated railroad lines and in respect to the street surface railroad lines hereinafter mentioned, operated by such company, as follows:

*Elevated Railroad Lines.*

1. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Ridgewood elevated line all trains, operated between 5:30 a. m. and 9 a. m., which are at present five-car trains, be made six-car trains; also, that from 9 a. m. to 10 a. m., the present three-car trains be made four-car trains; also, that from 2 p. m. to 4 p. m., the present three-car trains be made four-car trains; also that from 4 p. m. to 6 p. m. the present five-car trains be made six-car trains; also that from 6 p. m. to 7 p. m. the present three and four-car trains be made five-car trains.

2. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Brighton Beach elevated line all trains operated between 8:30 a. m. and 9:30 a. m., which are at present three and four-car trains, be made five-car trains; also that on Saturdays, only between 2:30 p. m. and 3 p. m., the present three-car trains be made four-car trains.

3. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its West End elevated line, between 5:30 a. m. and 6 a. m., two trains of three cars each be operated instead of, as at present, one train of two cars and one train of three cars; also that between 8:30 a. m. and 9 a. m. the present two-car trains be made three-car trains and the present three-car train be made a four-car train; also that from 6 p. m. to 6:30 p. m. the two present three-car trains be made four-car trains and the present two-car train be made a three-car train.

4. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Broadway elevated line, between 4 p. m. and 4:30 p. m., the present two-car train be made a three-car train; also that between 4:30 p. m. and 5 p. m. the three present three-car trains be made four-car trains; also that between 5 p. m. and 5:30 p. m. the present three-car train be made a four-car train and the three present four-car trains be made five-car trains; also that between 5:30 p. m. and 6 p. m. the four present four-car trains be made five-car trains; also that between 6 p. m. and 6:30 p. m. the present three-car train be made a four-car train.

5. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Culver elevated line, between 5:30 a. m. and 6 a. m., the present one-car train be made a two-car train.

6. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Fulton Street elevated line, between 5:42 p. m. and 6:19 p. m., all trains operated to the Fulton ferry be five-car trains instead of four-car trains as at present; also that on Saturdays only, between 4 p. m. and 4:30 p. m., one additional five-car bridge train be run.

7. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Fifth Avenue-Bay Ridge elevated line, between midnight and 1 a. m., the three present two-car trains be made three-car trains; also that between 3 p. m. and 3:30 p. m., the three present three-

car trains be made four-car trains; also that between 4 p. m. and 4:30 p. m. the present three-car train be made a five-car train; also that between 10:30 p. m. and 11 p. m. the three present three-car trains be made four-car trains.

8. This Board hereby recommends to the Brooklyn Heights Railroad Company that on week days on what is called its Lexington Avenue elevated line all trains operated between 2:30 p. m. and 4 p. m., which are at present three-car trains, be made four-car trains; also that between 4 p. m. and 4:30 p. m. the present three-car train be made a five-car train; also that between 6:30 a. m. and 7 a. m. the present four-car train be made a five-car train; also that between 7 a. m. and 7:30 a. m. the four present three-car trains be made four-car trains; also that between 8:30 a. m. and 9 a. m. the present four-car train be made a five-car train.

The above recommendations shall take effect on or before February 28, 1905.

9. This Board hereby recommends to the Brooklyn Heights Railroad Company that an additional track be constructed on all of the elevated lines.

This recommendation is made in view of the probability of improvement of the bridge terminals in Manhattan, thus enabling an additional service which can be handled on third track to be taken care of at the bridge terminals. In making this recommendation the Board is not unmindful of the questions of law involved in the construction of the third track.

10. This Board hereby recommends to the Brooklyn Heights Railroad Company that the work of lengthening the platforms of the elevated railroad stations (previously recommended by this Board) be continued and carried to completion as speedily as practicable.

11. This Board hereby recommends to the Brooklyn Heights Railroad Company that the enlargement (now under way) of terminal facilities of the elevated railroads at East New York be completed as soon as practicable.

Complaint having been made as to the physical condition of the elevated structures, we caused an examination of them to be made by our experts, who report that the structures are in good physical condition.

#### *Street Surface Railroad Lines.*

1. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Flushing line (between Ridgewood and Flushing) the week day service be increased so that cars will run from Flushing from 6 a. m. to 7:30 a. m. on a 7½-minute headway instead of a 20 minute as at present; from 7:30 a. m. to 8 a. m. on a 10-minute headway instead of a 20; from 8 a. m. to 3:30 p. m. on a 15-minute headway instead of a 20; from 3:30 p. m. to 5 p. m. on a 10-minute headway instead of a 20; from 5 p. m. to 6 p. m. on a 6-minute headway instead of a 10; from 6 p. m. to 6:30 p. m. on a 10-minute headway instead of a 20; and from 6:30 p. m. to 7 p. m. on a 15-minute headway instead of a 20. The Board also recommends to the company that the headway of the cars on this line operating only from Ridgewood to the junction of the Fresh Pond and Lutheran roads be 7½ minutes between the hours of 8 a. m. and 4 p. m. on week days instead of 12 minutes as at present.

2. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Hamburg Avenue line the week day car service be increased 20 per cent. between 6 a. m. and 8:30 a. m., and 17 per cent. between 12 m. and 3:30 p. m. The Board also recommends to the company that on Saturday between 8 p. m. and 11 p. m. the car service be increased 25 per cent.

3. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Flatbush Avenue line the week day car service be increased 20 per cent. from 9 a. m. to 4 p. m., and 25 per cent. from 6 p. m. to 10:15 p. m. This Board also recommends to the company that none of the Flatbush avenue cars be run beyond Avenue N, but that a shuttle car be operated between Vanderveer Park and Bergen Beach.

4. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Broadway line the week day car service be increased 20 per cent. between 6:30 a. m. and 4:30 p. m., that four extra cars

be run on week days on this line between the hours of 7 p. m. and 8 p. m. for the accommodation of theatre traffic, and that four additional cars be run at such time as will accommodate people returning from the theatre.

5. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Reid Avenue line the week day car service be increased 20 per cent. between 5:40 a. m. and 7:30 a. m.

6. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Gates Avenue line the week day car service be increased 20 per cent. between the hours of 9 a. m. and 1 p. m.

7. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Putnam and Halsey Street line the week day car service be increased 17 per cent. between 9 a. m. and 4 p. m.

8. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Hamilton Avenue line the week day car service be increased 15 per cent. between 6:30 a. m. and 8 a. m. This recommendation has heretofore been made to the company.

9. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Nostrand Avenue line the week day car service be increased 20 per cent. between 4:40 p. m. and 5:50 p. m.

10. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Bushwick Avenue line the week day car service be increased 33½ per cent. between 6:30 a. m. and 8 a. m., and that on Saturdays it also be increased 20 per cent. between the hours of 8:30 p. m. and 11 p. m.

11. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Douglass Street line the week day schedule of cars in operation from 7 p. m. to 7:30 p. m., viz., every ten minutes, be extended to 10 p. m.

12. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Fort Hamilton and Third Avenue line the week day headway of cars be reduced to 3½ minutes between the hours of 5:30 p. m. and 7:30 p. m.

13. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Fulton Street line the car service be increased 10 per cent. between 9 a. m. and 12 m. on Mondays.

14. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Grand Street line the week day car service be increased 20 per cent. between 5:30 a. m. and 7:30 a. m.

15. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Lorimer Street line the week day car service be increased 33½ per cent. between the hours of 6 a. m. and 7 a. m.

16. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Lutheran Cemetery line the week day car service be increased 40 per cent. between 9 a. m. and 4 p. m., and between 5:30 p. m. and 7:30 p. m.

17. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Richmond Hill line the week day car service be increased 20 per cent. between 6 a. m. and 8 a. m. and between 7 p. m. and 11 p. m., and 15 per cent. between 5 p. m. and 7 p. m.

18. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Seventh Avenue line the car service be increased 25 per cent. between 8:30 p. m. and 12 midnight on Saturday.

19. This Board hereby recommends to the Brooklyn Heights Railroad Company that on what is called the Union Avenue line the week day car service be increased as follows: Between 6 a. m. and 6:30 a. m., 13½ per cent.; between 6:30 a. m. and 7 a. m., 33½ per cent.; between 11 a. m. and 1:30 p. m., an average increase of 27 per cent.; between 4 p. m. and 5 p. m., an average increase of 22½ per cent.

The above recommendations shall take effect on or before February 28, 1905.

20. This Board hereby recommends to the Brooklyn Heights Railroad Company that the work of removing in its cars city ashes be performed at night. We are of the opinion that the cars now in use for this purpose are too heavy,

resulting in injury to the track with consequent discomfort to the passengers. We recommend that lighter cars be provided in the future for this work.

21. This Board again recommends to the Brooklyn Heights Railroad Company that a shelter station for passengers be provided at Sixty-fifth street and Third avenue, and recommends that a shelter station be provided on Gates avenue between Ralph avenue and Broadway. If permission of the local authorities cannot be obtained for the erection in the streets of proper structures for these shelter stations, this Board recommends to the company that it provide rooms in buildings for this purpose, or erect rooms on private property.

22. This Board hereby recommends to the Brooklyn Heights Railroad Company that all of its street surface railroad cars be equipped with destination signs which shall be properly illuminated at night.

23. This Board hereby recommends to the Brooklyn Heights Railroad Company that it increase its shop facilities so as to be enabled to constantly keep its rolling stock, both surface and elevated, in proper condition.

24. This Board hereby recommends to the Brooklyn Heights Railroad Company that (upon obtaining proper authority) it construct double tracks through Saratoga avenue between Douglass street and Broadway, for the purpose of furnishing additional service to the Brownsville district.

25. This Board hereby recommends to the Brooklyn Heights Railroad Company that on its Crosstown line, its Douglass Street line, its Greenpoint line, its Hamburg Avenue line, its Nassau Avenue line, its Ocean Avenue line, its Reid Avenue line, its Seventh Avenue line, its Sumner Avenue line, its Tompkins Avenue line, its Union Avenue line, and on the Williamsburg bridge, the single truck cars now operated be replaced as soon as practicable by double truck cars.

The company is expected to notify this Board, within ten days from the receipt by it of these recommendations, if it will comply therewith.

It would facilitate the operation of cars on the Williamsburg bridge if loops and a shelter station should be constructed by the city on the surface at the Manhattan terminus.

This Board indorses the suggestion of the extension of Flatbush avenue, which will provide an additional artery through the business portion of Brooklyn to the Brooklyn bridge.

The police regulation of the vehicular traffic lately instituted has been of great benefit in expediting the movement of cars in Brooklyn. In our opinion, the force detailed for this purpose should be increased so that a wider territory can be covered.

A complaint of residents and civic organizations at Jamaica is pending before the Board in relation to the service rendered the public by this company on Jamaica avenue. This matter is not treated in this report, because we have asked the opinion of the Attorney-General as to the obligation of the company to give transfers from its elevated structure on Crescent avenue to its surface cars running to Jamaica and *vice versa*.

These recommendations were sent to the president of the Brooklyn Heights Railroad Company, who was also president of the other operating companies. Below will be found reports made during the year by the electrical expert of the Board as to compliance with these recommendations:

NEW YORK, March 29, 1905.

Hon. GEORGE W. ALDRIDGE, *Secretary Board of Railroad Commissioners, Albany, N. Y.*

DEAR SIR—In the matter of the Brooklyn Heights Railroad Company complying with the recommendations of the Board of Railroad Commissioners for increased service, dated February 9th, the following is submitted:

In ascertaining whether the Board's recommendations were being complied with, the company's records of the actual number of trains and cars run during the different hours mentioned in the recommendations were secured and these were as far as possible checked by observation of movements. On account of the limited time this check did not cover the actual operation of

all lines, but was made on a sufficient number and for a sufficient period to establish the reliability of the record, and that the recommendations were practically being complied with except in cases noted below.

The result of the investigation in detail is submitted in the following statements, which show the number of additional trips, cars and trains run in compliance with the recommendations; also the detail of operation before the recommendations were made and since that time, showing the headway on which cars and trains are at present operated, the number of trips made, the increased number of trips, the per cent. of increase of service, and the actual number of cars and trains run during the hours mentioned in the recommendations on Monday, March 13th; Tuesday, March 14th; Wednesday, March 15th; Thursday, March 16th, and Friday, March 17th.

#### *Elevated Lines.*

*Ridgewood Line.*—The recommendation for the increase in number of cars per train from five to six between the hours of 5:30 a. m. and 9 a. m. has not been complied with, for the reason that the company has not received the necessary additional motor cars. The recommendation that the present three-car trains operated from 9 a. m. to 10 a. m. be made four-car trains has not been complied with, for the reason that the company has complied with a previous recommendation of the Board and reduced the headway on which trains are operated between these hours from 10 minutes to 7½ minutes. The company has not complied with the recommendation for increase in the number of cars in trains from three to four between the hours of 2 and 4 p. m., for the same reason. It has not complied with the recommendation that between the hours of 4 and 6 p. m. the five-car trains be made six-car trains, for the reason that it has not received the necessary additional motor cars, but it has put on four more trains in both the a. m. and p. m. rush hours. It has complied with the recommendation that the three and four-car trains run between the hours of 6 and 7 p. m. be made five-car trains.

*Brighton Beach Line.*—The company has complied with the recommendation that between the hours of 8:30 and 9:30 a. m. all trains operated be made five-car instead of four-car trains; that is to say, trains leaving Coney Island at 8:49, 9:09, 9:29 have been made five-car trains; in addition, it has increased the trains leaving Coney Island at 6:05 and 6:25 a. m. from three to four cars, and the 7:39, 7:49 and 8:15 a. m. trains from Coney Island from five to six cars; also the 4:41 p. m. train from Coney Island, which leaves Brooklyn bridge at 5:30 p. m., from five to six cars. It has complied with the recommendation that on Saturday between 2:30 and 3 p. m. the three-car trains be made four cars. All trains leaving Coney Island from 12:09 to 2:49 p. m., inclusive, are now four-car trains, and after 2:49 p. m. only five-car trains are run, continuing through the rush hours.

*West End Line.*—The company has complied with the recommendation that between 5:30 and 6 a. m. two trains of three cars each be operated instead of one train of two cars and one train of three cars; also, between the hours of 8:30 and 9 a. m. the two-car trains have been made three cars and the three-car train has been made a four-car train, and between 6 and 6:30 p. m. the two three-car trains have been made four-car trains and the two-car train has been made a three-car train. In compliance with previous recommendations, the trains leaving Park Row at 10:33 and 10:53 p. m. have been increased from two to three cars each.

*Broadway Line.*—The company has complied with the recommendation that between the hours of 4 and 4:30 p. m. the two-car trains be made three cars each; also that between 4:30 and 5 p. m. three three-car trains be made four cars each; also that between 5 and 5:30 p. m. the three-car trains be made four cars each; and between 6 and 6:30 p. m. the three-car trains be made four cars. It has not complied with the recommendation that between the hours of 5 and 5:30 p. m. the four-car trains be made five-car trains, and between the hours of 5:30 and 6 p. m. the four-car trains be made five-car trains, for the reason that it has not received the necessary additional motor cars for this purpose.

*Culver Line.*—The company has complied with the recommendation that between the hours of 5:30 and 6 a. m. the one-car train be made a two-car

train. To still further increase the facilities on this line it has made the one-car trains operated during the nonrush hours of the day two cars each.

*Fulton Street Line.*—The company has not complied with the recommendation that between the hours of 5:42 and 6:19 p. m. all trains operated to Fulton ferry be five-cars each instead of four, for the reason that it has not received the necessary additional motor cars for this purpose. On Saturdays only, between the hours of 4 and 4:30 p. m., four additional four-car trains are run, instead of one additional five-car train, as recommended. The company has also improved the service between the hours of 3 and 3:30 p. m. by the addition of two five-car trains on Saturday.

*Fifth Avenue-Bay Ridge Line.*—The company has complied with the recommendation that between midnight and 1 a. m. the three two-car trains be made three-car trains each; also that between the hours of 3 and 3:30 p. m. the three three-car trains be made four cars each; also that between 4 and 4:30 p. m. the three-car trains be made five-car trains each, and that between the hours of 10:30 p. m. and 11 p. m. the three-car trains be made four cars each. The latter addition to the service was made to accommodate the theater travel. After a week's experiment and counting the number of passengers carried, the company decided that it could better accommodate the travel by running these four-car trains from Bay Ridge at 10:14, 10:24 and 10:34 p. m., making the same increase in the service, but approximately thirty minutes earlier.

*Levington Avenue Line.*—The company has not complied with the Board's recommendation that between the hours of 2:30 and 4 p. m. the three-car trains be made four-car trains, for the reason that it has complied with a previous recommendation of the Board and reduced the headway on which trains are operated during these hours from 10 to 7½ minutes. It has complied with the recommendation that between the hours of 4 and 4:30 p. m. the three-car trains be made five-car trains; also that between the hours of 6:30 and 7 a. m. the four-car trains be made five-car trains each; also that between the hours of 7 and 7:30 a. m. the four three-car trains be made four-car trains each (all trains running between these hours now consist of five cars), and between 8:30 and 9 a. m. the four-car trains be made five-car trains each.

The above changes were all put in effect on or before February 28, 1905.

#### *Surface Lines.*

*Flushing-Ridgewood Line.*—The recommendations for increased service on this line have been complied with, and have resulted in the operation of 27 additional trips during the hours mentioned. This service was put in effect February 24.

*Hamburg Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of 23 additional trips during the hours mentioned. This service was put in effect February 25.

*Flatbush Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of 36 additional trips during the hours mentioned. This service was put in effect February 25.

*Broadway Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of 53 additional trips during the hours mentioned. This service was put in effect February 23.

*Reid Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of seven additional trips during the hours mentioned. This service was put in effect February 28.

*Gates Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of 16 additional trips during the hours mentioned. This service was put in effect February 25.

*Putnam Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of 11 additional trips during the hours mentioned. This service was put in effect February 27.

*Hamilton Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of six additional trips during the hours mentioned. This service was put in effect March 6.



*Nostrand Avenue Line.*—The company has not complied with the recommendations for increased service on this line, on account of shortage of cars.

*Bushwick Avenue Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of seven additional trips week days, also two trips on Saturdays. This service was put in effect February 28.

*Douglass Street Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of five additional trips during the hours mentioned. This service was put in effect February 28.

*Third Avenue-Fort Hamilton Line.*—The company has not complied with the recommendations for increased service on this line on account of shortage of cars; it has, however, complied with previous recommendations of the Board, and the service has recently been increased by the reduction of the headway on which cars are operated from 10 to 7½ minutes.

*Fulton Street Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of 10 additional trips, on Mondays only. This service was put in effect February 27.

*Grand Street Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of four additional trips during the hours mentioned. This service was put in effect February 28.

*Lorimer Street Line.*—The recommendations for increased service have been complied with, and have resulted in the operation of four additional trips during the hours mentioned. This service was put in effect February 27.

*Lutheran Line.*—The recommendations for increased service have been complied with and have resulted in the operation of 13 additional trips during the hours mentioned. This service was put in effect February 24.

*Richmond Hill Line.*—The recommendations for increased service have been complied with and have resulted in the operation of 28 additional trips during the hours mentioned. This service was put in effect February 14.

*Seventh Avenue Line.*—The recommendations for increased service have been complied with and have resulted in the operation of 14 additional trips, on Saturdays only. This service was put in effect on February 25.

*Union Avenue Line.*—The recommendations for increased service have been complied with and have resulted in the operation of eight additional trips during the hours mentioned. This service was put in effect February 28.

The company has not complied with the Board's recommendation No. 9, in reference to additional tracks on elevated lines.

Work is at present being done in compliance with the Board's recommendation No. 10, which refers to the lengthening of platforms at the elevated railroad stations. The detail of the work done was the subject of a special report to the Board, dated March 2, 1905.

Work is now being done in compliance with the Board's recommendation No. 11, which refers to enlargement of terminal facilities on the elevated system at East New York.

The company has not complied with the Board's recommendation No. 20, which refers to the removal of city ashes at night.

The company has not complied with the Board's recommendation No. 21, which refers to shelter stations for passengers.

The company has not complied with the Board's recommendation No. 22, which refers to destination signs.

The company is at present enlarging its shop facilities, in compliance with the Board's recommendation No. 23.

The company is taking the necessary legal steps to comply with the Board's recommendation No. 24, which refers to construction of double tracks through Saratoga avenue.

The company has not complied with the Board's recommendation No. 25, which refers to the replacing of single truck cars by double truck, but has ordered new cars and is remodeling old ones for this purpose.

Respectfully yours,

C. R. BARNES,

*Electrical Expert.*

(It is not thought necessary to print the statements of trips referred to in this report.)

NEW YORK, April 7, 1905.

HON. GEORGE W. ALDRIDGE, *Secretary Board of Railroad Commissioners, Albany, N. Y.*

DEAR SIR—In the matter of the complaint of Theo. Mulhollandnon against the Brooklyn Heights Railroad Company in reference to the operation of freight cars, I have made an investigation and submit the following:

The conditions existing in the vicinity of the Frank brewery were observed April 5th, from 1:30 to 4 p. m. There were no ash or freight cars moved on any of the lines in that vicinity during that period. It was learned that some freight cars were handled to and from this brewery and other business places, but this is usually done after 7:30 p. m. The company is at present relaying a portion of its track just east of Ridgewood, and this work requires the use of construction cars; these may at times delay the regular traffic, but this is a temporary matter, and the operation of these cars for that purpose will be discontinued when the track construction is completed, which will be in a few days.

It was observed that some ash cars are being moved during the daytime and that the company is not fully complying with the Board's recommendation that the ash business be done during the night.

Respectfully yours,

C. R. BARNES,

*Electrical Expert.*

NEW YORK, July 24, 1905.

Hon. Board of Railroad Commissioners, Albany, N. Y.

GENTLEMEN—I have made an investigation of the traffic conditions at present existing on the lines of the cars operated through Flatbush avenue by the Brooklyn Heights Railroad Company, and submit the following:

February 9, 1905, the Board recommended to the Brooklyn Heights Railroad Company that the week day car service on its Flatbush Avenue line be increased 20 per cent. from 9 a. m. to 4 p. m., and 25 per cent. from 6 p. m. to 10:15 p. m.

At the time the above recommendation was made the company were operating the Flatbush Avenue line on a schedule which required 299 trips per day.

In compliance with the above recommendation, on February 25, 1905, a schedule was put in effect which required 334 trips per day. This schedule was so arranged as to comply with the Board's recommendations between the hours of 9 a. m. and 4 p. m., and 6 and 10 p. m.

An examination of the records of trips actually run show that the schedule requirements were complied with.

The above schedule remained in force until May 27, 1905, when as is usually done, a rearrangement of schedules on all the company's lines was made to meet the change in traffic conditions between the winter and summer months.

On this company's system the local travel decreases, and what is known as the excursion travel increases during the summer season. The schedule adopted on that date on the Flatbush Avenue line required a total of 291 trips per day, a decrease in the number of trips of 43. During the hours between 9 a. m. and 4 p. m. this schedule required the operation of 92 trips, a decrease of 31 trips. In addition to this number of Flatbush avenue cars, the schedule required the operation of a minimum of 101 trips of the Brighton Beach line, which are operated through Flatbush avenue from Fulton street to Prospect Park; 101 trips being the minimum number, additional cars are operated to meet traffic requirements. With the addition of the Brighton Beach cars, the schedule of May 27th requires 392 trips between Fulton street and Prospect Park. The schedule adopted in compliance with the Board's recommendation required 334 trips. These, however, were run to points beyond Prospect Park. The cars at present operated are open, which seat 65. The ones previously run were closed, with an average seating capacity of 32 each. The Brighton Beach cars are operated from 8:10 a. m. to 12 o'clock midnight, and later to accommodate travel. During the evening rush hours the travel to the Beach is usually light, so that these cars furnish some facilities for the local travel as far as Prospect Park.

During this spring and summer the company have been welding rails on the route of the Flatbush Avenue line, which work seriously interfered with schedule operation. The welders occupied about 1,000 feet of track at different points, requiring single track operations for that distance.

To determine the exact conditions of operation and traffic on this line, a check of the number of cars run and the loads on them was made on July 12, 1905, from 6:53 a. m. to 8 p. m. This record was taken at the corner of Fulton street and Flatbush avenue; and it was found that there were four lines of cars operated through Flatbush avenue at that point, viz.:

The Third Avenue line, the cars of which run on Flatbush avenue between Fulton street and Third avenue, a distance of three blocks.

The Seventh Avenue line, the cars of which run on Flatbush avenue between Fulton street and Seventh avenue, about twelve blocks.

The Brighton Beach line, the cars of which run on Flatbush avenue between Fulton street and Prospect Park, about one-half way between Fulton street and the terminus of the Flatbush Avenue line on Flatbush avenue and the Flatbush Avenue line, the cars of which are operated to three destinations on the outbound trip, viz., Vanderveer Park, Vernon avenue and Bergen Beach; and on the inbound trip to Brooklyn Bridge, City Hall and Fulton Ferry.

Submitted with this report is a copy of the record taken, showing the time of the cars on the different lines, their destination and their condition of load. Also a summary of this record, showing the number of cars run on each line during each hour the record was taken, the average headway of cars, the number of cars with some passengers standing, the number with seated loads and the number with vacant seats.

From the check made and from data obtained from the company's records I find that, while the company has reduced the number of cars run on the Flatbush Avenue line, they have added cars of the Brighton Beach line, which furnish some facilities for nearly one-half the distance on Flatbush avenue.

That the cars run on Flatbush avenue are not overloaded to excess during the morning and evening rush hours and at other times are not loaded to their seating capacity.

That the minimum combined average headway during the morning and evening rush hours is about one minute.

That the number of cars operated on Flatbush avenue at present which run through Fulton street cannot be increased on account of the congestion of car traffic in that street.

That the increase in the excursion travel to the Beach has been greatly in excess of any other year, and that there has been no material increase during the spring and summer months in the local travel.

That for above reasons the increase in the number of cars operated for the excursion business is justified.

While the tables submitted show that in some cases passengers are standing in the cars of the Flatbush Avenue line, the overloading is not general or excessive, and as the combined headway of cars on Flatbush avenue is so short that it is impracticable to run more cars on these lines through Fulton street, no suggestion is made to change or increase the service as at present operated. But to provide for the proper accommodation of local travel on Flatbush avenue for the coming fall and winter months the following recommendations are made:

#### *Recommendations.*

1. That the company prepare a schedule for operation on Flatbush avenue, to be put in effect not later than September 1st, such schedule to require the operation of not less than 334 trips per day, 123 of which shall be run between the hours of 9 a. m. and 4 p. m.

2. The above schedule to be submitted to the Board of Railroad Commissioners not later than August 20, 1905.

Respectfully yours,

C. R. BARNES,  
*Electrical Expert.*

It is not deemed necessary to print the record referred to in this report.

The recommendations in this report were made the recommendations of this Board and the company notified. Subsequently the schedule referred to in the recommendations was submitted to this Board, and Mr. A. P. Haven, a complainant as to this line, informed this Board that the service had been much improved.

E. C. MCENTEE, *Assistant Secretary Railroad Commission, Albany, N. Y.*

DEAR SIR—In the matter of the complaint of A. Davison against the Brooklyn Heights Railroad Company in reference to operation on the Brighton Beach line of that company's system, I have investigated the matters complained of and submit the following:

A check of the operation on the Brighton Beach line, including the number of trains run, number of cars in trains, and condition of load, was made at the junction of the Brighton Beach and the main line at the Franklin Avenue station August 11, 1905, between the hours of 8:55 and 11:10 a. m.

A tabulated statement of the result of this test is submitted:

A. M.	IN.	
9:10	5 cars	Vacant seats in all; last three half loads.
9:15	2 cars	Seated load; none standing.
9:25	5 cars	Vacant seats in first, half load in second, one-quarter load in third and fourth, and 12 passengers in fifth.
9:42	4 cars	Vacant seats in all cars; none standing.
9:46	2 cars	One-half load in each.
9:54	4 cars	Vacant seats in first two; last two one-half load.
10:00	3 cars	One-half load in each.
10:14	2 cars	First half full; second one-quarter full.
10:25	3 cars	One-quarter load in each.
10:41	3 cars	One-half load in each.
10:46	2 cars	One-quarter load in each.
10:54	3 cars	Second car half load; other two quarter load.
11:10	2 cars	One-half load in each.

Mr. Davison's complaint refers to the conditions which exist on the Brighton Beach line after 9 a. m., and also refers to the order of the Board requiring the company to put more cars on the Brighton Beach line. This order was dated February 9th, and the company complied with it until May 27th, when a rearrangement of schedules was made by them to accommodate the summer travel.

As will be seen by the statement submitted, there was no overloading of cars between the hours of 9 and 11 o'clock on the date on which the check was made. The weather conditions on this day were favorable for travel, as it was warm and clear, and the traffic should represent normal conditions.

After investigation, I find that the facilities furnished on the Brighton Beach line during the hours mentioned in Mr. Davison's complaint are such that no action at present is necessary by your honorable Board.

Respectfully yours,

C. R. BARNES,  
*Electrical Expert.*

J. S. KENNEDY, *Secretary Railroad Commission, Albany, N. Y.*

DEAR SIR—In compliance with yours of September 1, 1905, in reference to shelter stations on the Brooklyn Heights railroad, I submit the following:

At this date I find that, in compliance with the Board's recommendations, the company have erected a waiting room on the southeast corner of Sixty-fifth street and Third avenue. This is a one-story wooden building, 20 by 6 feet, with a covered platform in front. They have also placed a car on the opposite (southwest) corner, which is also used as a waiting room.

I am informed by officials of the company that negotiations are pending for the rental of a room to be used as a waiting room on Gates avenue,

between Ralph avenue and Broadway, and that they expect to be able to comply with the Board's recommendation in this respect in the near future.

Respectfully yours,

C. R. BARNES,

*Electrical Expert.*

The waiting room on Gates avenue, between Ralph avenue and Broadway, has been provided. This Board is continuing its particular attention to the operation of these railroad lines. (Cases Nos. 3039, 3232, 3244, 3248, 3274, 3281, 3286, 3287, closed.)

## XI.

IN THE MATTER OF THE COMPLAINT OF LOUIS C. LINDEMAN AGAINST THE  
BROOKLYN HEIGHTS RAILROAD COMPANY AS TO SERVICE RENDERED THE  
PUBLIC.

March 9, 1905.

This complaint, by Louis C. Lindeman, of Brooklyn, against the Brooklyn Heights Railroad Company, was filed with this Board on November 12, 1904. It alleged that the company was running open cars on its Fort Hamilton line, notwithstanding the weather was cold; that there should be a shelter station at the transfer point from its surface line to its elevated line at Fifth avenue and Sixty-eighth street, Brooklyn; and also alleged that through surface cars should be operated from the Hamilton ferry to Fort Hamilton. A report in this matter was made by the electrical expert of this Board and the Board recommended to the company as follows:

1. That as soon as the improvements in terminal facilities at the Sixty-fifth Street elevated station of the Bay Ridge division are completed, and not later than January 1, 1905, the Brooklyn Heights Railroad Company shall increase the number of trains operated on the Bay Ridge division to and from the Sixty-fifth Street terminal so as to reduce the present headway of ten minutes to seven and one-half minutes during the rush hours.

2. That the number of surface cars operated between Fort Hamilton and Sixty-fifth Street terminal of the elevated line be at the same time increased so as to reduce the headway on which these cars are run from ten minutes at present to seven and one-half minutes during the rush hours.

3. That the number of through cars operated on the Hamilton Avenue line between Fort Hamilton and Hamilton ferry be at the same time increased so as to reduce the headway of ten minutes at present to seven and one-half minutes.

4. That the company erect a suitable waiting room to accommodate transfer passengers at Sixty-eighth street. That this waiting room be maintained in a proper manner, lighted and when necessary comfortably heated.

The company informed the Board that the first, second and third recommendations would be complied with, taking effect January 16, 1905, and that, in relation to the waiting room referred to in the fourth recommendation: " \* \* \* It was our understanding with Mr. Lindeman that he would arrange for the location of a waiting room to accommodate the transfer passengers at Sixty-eighth street, and when the right is procured for this company to erect such building, it will be erected and properly maintained, lighted and heated when necessary. \* \* \* " A copy of the company's letter was sent to the complainant, who expressed satisfaction, and the case was closed. (Case No. 3270.)

## XII.

IN THE MATTER OF THE COMPLAINT OF JOHN W. GOULD AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION) AS TO THE NONHEATING OF CARS.

March 9, 1905.

This complaint, by John W. Gould, of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division), was filed with this Board on January 10, 1905. It alleged that southbound express trains from One Hundred and Fifty-fifth street, on the Ninth Avenue line of the Manhattan railway, between 8 and 9 o'clock a. m., were not heated, and that the company had reduced its train service since the opening of the Subway. A report in the matter of the heating of trains was made by the electrical expert of this Board, and recommendations made to the company. The company informed the Board that: " \* \* \* In relation to the heating of our cars, I have to say that every effort is made to furnish sufficient heat at all times. \* \* \* As to Mr. Gould's complaint regarding reduction in the train service on the Manhattan division since the opening of the Subway, I have to say that our car mileage from February 1st to date is greater than the same number of days in October, 1904. \* \* \* " The case was closed. (Case No. 3280.)

## XIII.

IN THE MATTER OF THE COMPLAINT OF P. CONDON, JR., AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION).

March 9, 1905.

This complaint, by P. Condon, Jr., of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division), was filed with this Board on February 2, 1905. It alleged that: " \* \* \* Ever since the elevated railroad (Second Avenue division) of borough of Manhattan, have been running trains over the Subway tracks to West Farms, they have ceased to start any trains out of their One Hundred and Twenty-ninth Street station of Second Avenue division, downtown. They use one (1) car as a shuttle train out of One Hundred and Twenty-ninth street down to One Hundred and Twenty-seventh street, where passengers must change cars and wait for a through train. \* \* \* "

A copy of the complaint was sent to the company, which answered that " \* \* \* in relation to the shuttle-train service from One Hundred and Twenty-ninth street and Third avenue to One Hundred and Twenty-seventh street and Second avenue, I have to say that, during the rush hours, morning and evening, regular trains leave One Hundred and Twenty-ninth street and Third avenue from 6:29 to 8:35 a. m., and shuttles are run from 5:57 to 7:25 a. m. From 8:41 a. m. we run a shuttle service only between the points mentioned, up to 5:17 p. m., on a six-minute interval. From 5:20 to 5:51 p. m. a through service is operated, after which time the shuttle again commences to operate, until 1:21 a. m. This service has given ample accommodation up to the present time. \* \* \* "

A copy of the answer was sent to complainant. No reply was received, and the case was closed. Subsequently an inspector of this Board reported that " \* \* \* Such an improvement in the train service from One Hundred and Twenty-ninth street has been made that I believe there is no further cause for complaint. \* \* \* " (Case No. 3295.)

## XIV.

IN THE MATTER OF THE COMPLAINT OF G. H. ATWELL & SON AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY (WEST SHORE RAILROAD, LESSOR) AS TO FREIGHT RATES ON THE WEST SHORE RAILROAD AT CAZENOVIA.

March 9, 1905.

This complaint, by G. H. Atwell & Son against the New York Central and Hudson River Railroad Company (West Shore railroad, lessor), was filed with this Board on January 23, 1905. It alleged that rates on freight from the west on the West Shore railroad at Cazenovia were greater than at Georgetown on said railroad, further east than Cazenovia. A copy of the complaint was sent to the company, which answered that: " \* \* \* We have, however, arranged to restore, on February 15th, the rates which were in force to Georgetown previous to May 15, 1904, thereby applying the same rates to Georgetown as to Cazenovia; and this action, we understand, will remove the objections of the present complainants. \* \* \*" A copy of the answer was sent to complainants, who expressed themselves as satisfied, and the case was closed. (Case No. 3289.)

## XV.

IN THE MATTER OF THE COMPLAINT OF RICHARD F. STACK AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION) AS TO TRAIN SERVICE ON THE SECOND AVENUE ELEVATED RAILROAD LINE.

March 9, 1905.

This complaint, by Richard F. Stack, of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division), was filed with this Board on January 21, 1905. It alleged that on the Second Avenue (New York city) elevated line of the Manhattan railway the trains were overcrowded. Mr. Stack was informed that this Board was then investigating this subject, and the case of this particular complaint was closed. (Case No. 3288.)

## XVI.

IN THE MATTER OF THE COMPLAINT OF THE GEORGE W. JUMP COMPANY AGAINST THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY (CENTRAL NEW ENGLAND RAILWAY) AS TO NONDELIVERY OF SHIPMENT OF HAY.

March 9, 1905.

This complaint, by the George W. Jump Company, of Brooklyn, against the New York, New Haven and Hartford Railroad Company (Central New England railway), was filed with this Board on January 12, 1905. It alleged that complainants were unable to receive at Brooklyn shipment of hay from Jackson Corners, N. Y., on the Central New England Railway. A copy of the complaint was sent the Central New England Railway, which answered: " \* \* \* The first intimation that my office had that they desired a car to load was their letter of November 30th, in which they failed to give the destination of the large car, which information was necessary for us to have in order to give them a proper car. Their letter of December 7th was not received here until December 8th, on which date embargoes were placed against us by connecting lines, as per Embargo Notice No. 93, inclosed herewith, and this embargo was not raised until January 4th. I beg to advise that the car was loaded and went forward under date of January 12th. I regret very much

that Messrs. Jump & Co. experienced so much difficulty in getting their shipment forwarded, but the facts are that we are more or less hindered at all times by embargoes, and had Messrs. Jump & Co. been more explicit in their correspondence there is a possibility that their consignment would have moved prior to the embargo of December 8th. \* \* \*

A copy of the answer was sent to complainants. No reply was received from complainants, and the case was closed. See other complaints by these complainants under this title in this volume. (Case No. 3282.)

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#### XVII.

IN THE MATTER OF THE COMPLAINT OF HOWARD THORNTON AGAINST THE ERIE RAILROAD COMPANY IN RELATION TO PASSENGER TRAIN SERVICE FROM GREY-COURT TO NEWBURGH.

March 15, 1905.

This complaint, by Howard Thornton, of Newburgh, against the Erie Railroad Company, was filed with this Board on December 15, 1904. It alleged insufficient passenger train service on said company's railroad from Grey-court to Newburgh (involving reaching and returning from Goshen), through rearrangement of timetable. A copy of the complaint was sent to the company, which answered that, " \* \* \* Our investigation also shows that the present arrangement is much more satisfactory to the majority of the people served than the schedule in effect prior to the change in question. \* \* \*"

A copy of this answer was sent to complainant, who replied. A hearing in this matter was set before this Board for Wednesday, March 15, in New York city, at which time neither the complainant nor any one representing him appeared. The case was closed. (Case No. 3265.)

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#### XVIII.

IN THE MATTER OF THE COMPLAINT OF C. H. TURNER AGAINST THE NEW YORK AND OTTAWA RAILROAD COMPANY AS TO SETTING OF FIRES.

March 29, 1905.

At page 26, 1st Vol., report of this Board for 1904, will be found a statement of this complaint, which was in relation to alleged setting of fires on the New York and Ottawa Railroad, along lands of complainant. Recommendations were made by this Board that dry brush, etc., be removed from the right of way of the railroad. The receiver of the company informed the Board, under date of March 26, 1905, that, " \* \* \* As soon as the weather conditions are favorable and the snow has disappeared the matter will receive attention. \* \* \* " This Board during the year, through the regular report of inspection of this railroad, again recommended that dry brush, etc., be removed from the right of way, and the company informed the Board that "Clearing will be prosecuted to the extent of available track labor at hand." (Case No. 3147.)

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#### XIX.

WILLIAM E. FRICK AND H. S. METZ AGAINST THE BUFFALO AND WILLIAMSVILLE ELECTRIC RAILWAY COMPANY AS TO NON-OPERATION OF THE PORTION OF ITS LINE BETWEEN WILLIAMSVILLE AND THE TRANSIT ROAD.

March 30, 1905.

This complaint, by William E. Frick and H. S. Metz against the Buffalo and Williamsville Electric Railway Company, was filed with this Board on



March 9, 1905. It alleged that the company had not operated cars for three weeks between Williamsville and the Transit road. A copy of the complaint was sent to the company, which answered that operation of this portion of the road would be resumed, and subsequently that operation had been resumed on this portion of the road. The case was closed. (Case No. 3306.)

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## XX.

IN THE MATTER OF THE COMPLAINT OF GEORGE C. COFFIN (FOR CLIENTS)  
AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY  
IN RELATION TO FREIGHT RATES ON SHIPMENTS OF HAY.

March 30, 1905.

This complaint, by George C. Coffin, of New York city (for clients), against the New York Central and Hudson River Railroad Company, was filed with this Board on January 30, 1905. It alleged that clients of complainant were unable to obtain cars on branch lines of said company's railroad (such as the R., W. & O. division) for shipment of hay to New York city, thus being under considerable disadvantage as compared with shippers of hay on the main line of said company's railroad, the complaint alleging that shippers on the main line were given preference over those on branch lines in receiving cars. The complaint also alleged that the New York Central Company should make a joint rate with the Lehigh Valley Railroad Company at Sterling "at such times as the New York Central is unable to handle the hay of shippers along the R., W. & O. R. R., owing to lack of cars." A copy of the complaint was sent to the New York Central and Hudson River Railroad Company, which answered, denying the allegations and asserting that, "We have no joint rates in connection with the Lehigh Valley Railroad, applying on traffic from stations on our lines to New York city via Sterling, nor are the conditions such as would make such an arrangement practicable or proper." A copy of the answer was sent to complainant. The complainant did not reply, and the case was closed. (Case No. 3293.)

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## XXI.

IN THE MATTER OF THE COMPLAINT OF F. FRIEDLEBEN AGAINST THE NEW  
YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY (AS LESSEE OF THE  
NEW YORK AND HARLEM RAILROAD) AS TO PASSENGER FARE.

April 18, 1905.

This complaint, by F. Friedleben, of Wakefield, New York city, against the New York Central and Hudson River Railroad Company (as lessee of the New York and Harlem Railroad), was filed with this Board on March 29, 1905. It stated that the passenger fare on the New York and Harlem Railroad from Grand Central Station to Wakefield was 28 cents, whereas the fare on such railroad from Grand Central Station to Tremont was 10 cents, and from Tremont to Wakefield 15 cents, a total of 25 cents, and alleged that this difference of 3 cents was unjust. A copy of the complaint was sent to the company, which answered that the fare to Tremont, formerly 12 cents, had been temporarily reduced, owing to temporary increase in travel, to 10 cents, and subsequently remained at 10 cents. A copy of the answer was sent to complainant, who replied. After consideration, this Board determined not to proceed further in the matter, and the case was closed. (Case No. 3317.)

## XXII.

IN THE MATTER OF THE COMPLAINT OF THE WEST END BOARD OF TRADE OF BROOKLYN AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO SERVICE RENDERED THE PUBLIC.

April 18, 1905.

This complaint, by the West End Board of Trade of Brooklyn against the Brooklyn Heights Railroad Company, as to operation of trains on the elevated lines of said company in the Third avenue section, the Eighty-sixth Street and Bath Avenue line and the Eighty-sixth Street and Fifth Avenue line, Brooklyn, was filed with this Board on November 17, 1904. A copy of the complaint was sent to the company, which answered, enclosing a memorandum of a conference between the company and representatives of the complainants, at which the electrical expert of this Board was present, who reported to the Board as follows:

" \* \* \* At this conference different items of the complaint were fully discussed and agreements as follows which were satisfactory to the complainants were reached:

"In reference to the first item of the complaint, it was agreed that final action on this matter should be held in abeyance until sixty days from the date of conference. In the meantime the railroad officials promise to hold a relay or reserve train at the Sixty-fifth street terminal, to be used for the purpose of filling the schedule when trains due to arrive at that station are late. It was further agreed that the railroad officials will do all in their power to maintain the schedule and discontinue, as far as possible, the practice of running by stations between Sixty-fifth street and Thirty-sixth street.

"In reference to the request contained in the second item of the complaint, for an increase in number of trains, so as to reduce the headway from ten minutes at present to five or seven minutes, it was agreed that definite action on this request be held in abeyance, pending the completion of the improvements at Sixty-fifth street terminal, which the company's officials state will be within about sixty days, at which time they promise to install a service to and from Sixty-fifth street during the rush hours of six-car trains, operated on seven and one-half minutes headway.

"In the matter of the item of the complaint in reference to poor service on Eighty-sixth Street and Bath Avenue line, the company are at present operating a surface car service between the Sixty-fifth street terminal of the Elevated line and Fourteenth avenue via Fifth avenue and Eighty-sixth street. These cars are run on a twenty minute headway during the day and a ten minute headway during the evening rush hours. In compliance with the request of the association the company officials agree to immediately increase this service by operating cars on a ten minute headway during the morning rush hours.

"In the matter of the last item of the complaint, which refers to a change in the method of operating cars on the Eighty-sixth Street and Fifth Avenue line during the rush hours, it was agreed that this matter be held open.

"In addition to the matters mentioned in the complaint, the company are at present operating a local service on the Elevated line between Thirty-sixth street and the Brooklyn bridge during the rush hours, at which times these trains are run on ten minutes headway, the last train leaving Thirty-sixth street at 8:31 in the morning. It was agreed that this service should be immediately continued until nine o'clock a. m., the last local train to leave Thirty-sixth street station at that time."

Subsequently complainants alleged that through trains on the elevated line to the Sixty-fifth street terminal consisted of but five cars instead of six; that at Sixty-fifth street the tracks on the east side of the station platform were used the greater part of the day for storing empty cars, with the result that trains were frequently compelled to wait beyond the

station or passengers compelled to walk to reach surface cars, and that the additional switch for surface cars had not been constructed. In relation to this complaint the electrical expert of this Board reported as follows:

"\* \* \* At this date I find that the platforms have been lengthened to accommodate six-car trains and that two six-car trains are at present being operated during the morning rush hours, and three during the evening rush hours, to and from Sixty-fifth street. All other trains during those hours are five cars each.

"I was informed that on account of the increased number of cars necessary for operation on the different lines, in compliance with the Board's recent recommendations, the company has not at present sufficient cars to make all six-car trains on this line during the rush hours.

"In reference to the statement that 'at Sixty-fifth street the tracks on the east side of the platform are used the greater part of the day for storing empty cars, with the result that trains are frequently compelled to wait beyond the station,—I visited Sixty-fifth street station yesterday during the afternoon and found no obstructions such as mentioned, both main tracks being clear so that trains could run to the end of the station.

"I am informed that the additional switch mentioned in the communication, connecting the two surface car tracks, will be completed to-day."

A copy of this report was sent to complainants. No reply was received from complainants, and the case was closed. (Case No. 3252.)

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### XXIII.

IN THE MATTER OF THE COMPLAINT OF JOHN C. RAYMOND AGAINST THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY AS TO THE YARD OF THAT COMPANY AT ST. GEORGE.

April 24, 1905.

This complaint, by John C. Raymond against The Staten Island Rapid Transit Railway Company, was filed with this Board on March 27, 1905. It complained of the condition of the yard of that company at St. George, as to its being obstructed by old scrap, old ties, old lumber, etc. A report in the matter was made by the inspector of the Board to the effect that, "This yard has been undergoing changes and enlargement, and the work when winter came on was not completed; therefore (as is always the case when this sort of work is being done), there was quite an amount of material, both old and new, scattered about; also piles of dirt, etc., not yet removed. Since the snow and ice melted the company has been at work cleaning up and is now engaged doing it. The officials of the company advise me that this work will be continued to completion. I do not think that at the present time there is necessity for any action of the Board regarding the matter."

A copy of the report was sent to the complainant, and the case was closed. (Case No. 3324.)

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### XXIV.

IN THE MATTER OF THE COMPLAINT OF SUTHERLAND R. HAXTUN AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO SERVICE RENDERED THE PUBLIC.

May 31, 1905.

This complaint, by Sutherland R. Haxtun, of Brooklyn, against The Brooklyn Heights Railroad Company, was filed with this Board on March 22,

1905. It alleged that the company did not furnish sufficient cars for the accommodation of the public on its Montague Street line from the Wall street ferry, on Saturday afternoons, and that its service on the Brooklyn bridge at night after the rush hours was insufficient. A copy of the complaint was sent to the company, which answered. Two reports in the matter were made by the electrical expert of this Board, copies of which were sent to complainant. The complainant informed this Board in reference to the Montague Street line, that " \* \* \* Since the date of my original complaint my observation has been that the conditions complained of on this line have been corrected, and the conditions on the bridge trains have improved. The object for which I addressed you has been accomplished in one case, and partially in the other. \* \* \* " The case was closed. (Case No. 3312.)

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 XXV.

IN THE MATTER OF THE COMPLAINT OF THE BOARD OF TRADE OF THE EASTERN DISTRICT OF BROOKLYN AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO SERVICE RENDERED THE PUBLIC ON ITS MEEKER AVENUE SURFACE LINE.

May 31, 1905.

This complaint, by the Board of Trade of the Eastern District of Brooklyn against The Brooklyn Heights Railroad Company, was filed with this Board April 12, 1905. It alleged that the service rendered the public by the company on its Meeker Avenue surface line in Brooklyn, was insufficient. A copy of the complaint was sent to the company, which answered that,

" \* \* \* The Meeker Avenue line passes through a very congested section of the city and the service is frequently interrupted by street traffic, causing the cars to bunch. The service can possibly be considerably improved on Meeker avenue by substituting for the present through service a shuttle service between Penny Bridge (Newtown Creek) and Graham avenue with transfer to the Graham avenue cars at the junction of Meeker and Graham avenues. The cars on the latter line are operated on a close headway, and, therefore, there would be no serious delay in making this transfer. I have communicated with the Eastern District Board of Trade this day, as per copy of letter enclosed, asking their wishes respecting such service and will be governed by their recommendations in this matter. \* \* \* "

A copy of this answer was sent to complainants, who replied, stating that the shuttle service would be satisfactory. The company informed the Board that, " \* \* \* I beg to advise that we have arranged to make the change \* \* \* in the service on Meeker avenue on July 17th next. We have been in correspondence with the Eastern District Board of Trade on this subject and the change is in line with their suggestion. \* \* \* " The case was closed. (Case No. 3330.)

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 XXVI.

IN THE MATTER OF THE COMPLAINT OF EDWARD C. BUCHENAU AGAINST THE ERIE RAILROAD COMPANY AS TO TRAIN SERVICE ON THE NANUET AND NEW CITY BRANCH.

May 31, 1905.

This complaint, by Edward C. Buchenau, of New City, against the Erie Railroad Company, was filed with this Board on May 10, 1905. It asked

that additional train service be furnished on the branch of the Erie Railroad running from Nanuet to New City. A copy of the complaint was sent to the company, which answered, stating that it had arranged to run an additional passenger train from New City about 6:20 a. m. A copy of this answer was sent to the complainant, who replied, stating that the company had put said train in service, leaving New City at 6:30 a. m., which complainant stated was satisfactory. The case was closed. (Case No. 3342.)

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XXVII.

IN THE MATTER OF THE COMPLAINT OF THE WEST SIDE TAXPAYERS' ASSOCIATION OF NEW YORK CITY AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AS TO ITS TRACKS ON ELEVENTH AVENUE BETWEEN THIRTIETH AND SIXTIETH STREETS AND OPERATION OF FREIGHT TRAINS ON SAID TRACKS.

Determination. May 31, 1905.

This complaint, by the West Side Taxpayers' Association of New York City, against the New York Central and Hudson River Railroad Company, was filed with this Board on April 3, 1905. It refers to the manner in which freight trains on the New York Central and Hudson River Railroad are operated on Eleventh avenue between Thirtieth and Sixtieth streets, New York city. A hearing in the matter was given by this Board in the city of New York on April 26, 1905, at which Henry G. Schneider appeared for the complainants; A. H. Harris appeared for the New York Central and Hudson River Railroad Company. An inspector of the Board made a report as to the operation of the trains in question.

After consideration of the matter, it seems to the Board that the conditions in the operation of the trains in question can be and should be improved. This Board, therefore, hereby recommends to the New York Central and Hudson River Railroad Company as follows:

1. That its freight trains operated on Eleventh avenue, New York city, between Thirtieth and Sixtieth streets, shall not consist of more than twenty-five cars.

2. That no freight train shall be started from the Sixtieth street yard for the Thirtieth street yard until it is known at the Sixtieth street yard that there is space in the Thirtieth street yard for the reception of said train; also that no freight train be started from the Thirtieth street yard for the Sixtieth street yard until it is known at the Thirtieth street yard that there is space in the Sixtieth street yard for the reception of said train. There may be times when it will not be practicable, because of conditions, to exactly observe this recommendation and the recommendation is not to be construed as being imperative under all circumstances. However, the recommendation is to be construed as being imperative when the conditions, strictly construed, render compliance practicable.

3. That, between the hours of 6:45 and 7:15 a. m., 8:30 and 9 a. m., 12 m. and 1 p. m., 3:45 and 4:15 p. m. and 5:45 and 5:15 p. m., as few freight trains as practicable be operated on Eleventh avenue.

4. That a flagman be stationed by the company about in the center of the block between Thirty-eighth and Thirty-ninth streets, and that a flagman be stationed by the company about in the center of the block between Forty-fifth and Forty-sixth streets.

A copy of these recommendations was sent to the company, which informed the Board that it had complied therewith. An inspector of this Board also reported that the company had complied with these recommendations. The case was closed. (Case No. 3322.)

## XXVIII.

IN THE MATTERS OF INVESTIGATION BY THE BOARD OF TRAFFIC CONDITIONS ON  
THE LINES OF THE UNION RAILWAY COMPANY OF NEW YORK CITY.

Determination. June 21, 1905.

The Board of Railroad Commissioners hereby recommends to the Union Railway Company of New York city:

1. That Saturday and Sunday afternoons cars be operated on Jerome avenue between Eighth avenue, One Hundred and Fifty-fifth street and Woodlawn, on a six-minute headway instead of an eight-minute headway as at present.
2. That on the Webster Avenue line from One Hundred and Twenty-eighth street to Mount Vernon, during the day cars be operated on a six-minute headway instead of an eight-minute headway as at present.
3. That on the One Hundred and Twenty-eighth Street-West Farms line from One Hundred and Twenty-eighth street to West Farms Square and Morris Park, and on the Westchester line from Tremont station of the elevated, through West Farms Square to Westchester, cars be operated on a one and one-fourth-minute headway on Saturday and Sunday afternoons instead of a one and one-half-minute headway as at present, and that on those lines cars be operated between the hours of 6:45 a. m. and 8 a. m., and between the hours of 5 p. m. and 7 p. m. on a two and one-half-minute headway instead of a three-minute headway as at present.
4. That the company provide, by renting or building, a suitable shelter for passengers at the transfer point at West Farms Square.
5. That the company provide, by renting or building, a suitable shelter for passengers at the transfer point at Tremont and Webster avenues.
6. That the company provide, by renting or building, a suitable shelter for passengers at the transfer point at Burnside and Tremont avenues.
7. It is recommended that a shelter for passengers be provided at the corner of Jerome avenue and One Hundred and Sixty-first street, and that a sign indicating the fact be placed where it will be seen by the passengers.
8. That the gate at the motorman's end of the car be opened at transfer points to facilitate ingress and egress of passengers.
9. That the destination of cars be distinctly indicated on the front of the car, so that both day and night passengers may be able to identify their cars with reasonable ease.

A copy of these recommendations was sent to the company, which replied that, " \* \* \* These recommendations will have our early consideration." An inspector of this Board reported as follows, as to compliance by the company with these recommendations:

*To the Honorable the Board of Railroad Commissioners, Albany, N. Y.*

GENTLEMEN—Saturday July 22d, Sunday July 23d, Monday July 24th, Tuesday July 25th, and Sunday July 30th, 1905, I took observation and made record of cars operated on the Union Railway Co.'s lines at the following points:

Saturday July 22, 1905 from 1 to 3 p. m. at West Farms Square of the Tremont Avenue line from Tremont Third Avenue elevated station through West Farms to Westchester; also the line from One Hundred and Twenty-eighth street to West Farms and Morris Park. And from 3:30 to 5:30 p. m. at Jerome avenue and One Hundred and Sixty-first street of the One Hundred and Fifty-fifth Street Woodlawn and Yonkers Avenue lines over Jerome avenue.

Sunday July 23, 1905, from 2 to 4 p. m. at One Hundred and Sixty-first street and Jerome avenue of the One Hundred and Fifty-fifth Street Woodlawn and Yonkers Avenue lines over Jerome avenue. From 4:30 to 7:30 p. m. at West Farms Square of the Tremont Avenue line from the Third avenue elevated station through West Farms to Westchester. Also the line from One Hundred and Twenty-eighth street to West Farms and Morris Park.

Monday July 24th, from 6:45 to 8 a. m. and 4:30 to 7 p. m., at West Farms Square checking the week-day morning and evening rush hour service on the Tremont Avenue line from Third Avenue elevated station to Westchester, and the One Hundred and Twenty-eighth Street, West Farms and Morris Park line.

Tuesday July 25, 1905, at West Farms Square, from 6:45 to 8 a. m., and 5 to 7 p. m. on the Tremont Avenue line, and One Hundred and Twenty-eighth Street, West Farms and Morris Park line.

Sunday July 30th, at Jerome avenue and One Hundred and Sixty-first street from 1 to 3:30 p. m. checking the movement of cars on the Jerome Avenue line from One Hundred and Fifty-fifth street Central Bridge to Woodlawn and Yonkers avenue. And from 4 to 5:30 p. m. checking the movement of cars on the Tremont Avenue line from Tremont Third Avenue elevated station through West Farms to Westchester. From 5:30 to 7 p. m. at Boston Road and Southern Boulevard checking the cars of One Hundred and Twenty-eighth Street, West Farms and Morris Park line.

Tuesday, August 1, 1905, at Fordham on Webster avenue, from 11 a. m. to 3 p. m., checking the movement of cars running from One Hundred and Twenty-eighth street to Mount Vernon on Webster avenue.

And find the following:

First. That Saturday and Sunday afternoon cars operated on Jerome avenue between Eighth avenue, One Hundred and Fifty-fifth street to Yonkers avenue (past Woodlawn) have been reduced from an eight-minute headway in effect June 10, 1905, to a six-minute headway at present. This complies with the order of your Honorable Board of June 21, 1905, to give a three and a half minute service between One Hundred and Fifty-fifth street, Eighth avenue and Woodlawn. The reduction in headway has been made on the cars running to Yonkers avenue on Jerome avenue, past Woodlawn, which gives the service to Woodlawn as ordered.

Second. That on the Webster Avenue line from One Hundred and Twenty-eighth street to Mount Vernon during the day August 1, 1905, there was an average of eight cars per hour run, making a headway of seven and one-half minutes. This is not quite down to a six-minute headway as ordered by your Honorable Board June 21, 1905, but is some reduction from the headway in effect June 10, 1905. For a single hour some other days I did count ten cars per hour, which is a six-minute headway as ordered.

Third. That on the One Hundred and Twenty-eighth Street West Farms line from One Hundred and Twenty-eighth street to West Farms and Morris Park, and on the Westchester line from Tremont station of the Third Avenue elevated railroad through West Farms Square to Westchester, on Saturday and Sunday afternoons the headway between cars has practically been reduced one-half minute from the service given June 10, 1905, thereby complying with the order of your Honorable Board of June 21, 1905. And that on these same lines between the hours of 6:45 and 8 a. m. and 5 and 7 p. m. week-days, cars are run on a two and a half minute headway at present, instead of a three minute-headway in effect June 10, 1905. This complies with the order of your Honorable Board of June 21, 1905.

During the hours of my observation only very few cars were overloaded. One car on the One Hundred and Twenty-eighth Street, West Farms and Morris Park line had passengers standing, and four cars on the Tremont, West Farms and Westchester line from West Farms to Tremont station had passengers standing.

On the line from West Farms to Morris Park and more especially to Westchester, there is some overloading, but this cannot very well be avoided, as there are now operated on this part of the line all the cars that can well be moved without congestion.

As the Tremont Avenue and Westchester line and the One Hundred and Twenty-eighth Street, West Farms and Morris Park line run over the same track from West Farms east, it gives on this part of the line where most needed, a service of one and a quarter and one and a half minutes during Saturday and Sunday afternoons, and morning and evening week-day rush hours. Also a two and a half minute service at other hours of the day.

The other parts of the lines spoken of are well taken care of, having a two and a half minute service at all times, unless there should occur an unavoidable delay.

Fourth. The Union Railway Co. has not yet provided a waiting room at West Farms Square.

Fifth. The Union Railway Co. has not yet provided a waiting room at Tremont and Webster avenues.

Sixth. The Union Railway Co. has not yet provided a waiting room at Burnside and Tremont avenues.

Seventh. The Union Railway Co. has placed in plain view of the transferring passengers a waiting room sign on the building used for that purpose at One Hundred and Sixty-first street and Jerome avenue.

Eighth. The gates are opened on the motorman's end of the car at all transfer points when closed cars are used.

Ninth. Destination signs are shown on the front of cars, which plainly show the destination of such cars. Only three cases were noted where such signs were not displayed, and they no doubt had been lost off while the car was making that trip.

From all my observations made, count of cars run, and records taken on the several lines of the Union Railway Co. affected by the order issued by your Honorable Board June 21, 1905, I have to report that all of the recommendations have practically been complied with, except those providing waiting rooms or shelter for passengers at three points.

The case was closed. (Cases No.'s 3154, 3236 and 3259.)

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### XXIX.

IN THE MATTER OF THE COMPLAINT OF J. M. HASTINGS, OF MOUNT MORRIS, FOR H. E. BROWN, AGAINST THE DANSVILLE AND MOUNT MORRIS RAILROAD AS TO FENCES.

July 6, 1905.

This complaint, by J. M. Hastings, of Mt. Morris, for H. E. Brown, against the Dansville and Mt. Morris Railroad, was filed with this Board on May 13, 1905. It alleged that the railroad did not maintain fences through the lands of Mr. Brown, near Mt. Morris. A copy of the complaint was sent to the company, which answered, " \* \* \* Everything is being done to repair these fences as quickly as possible \* \* \* ." A copy of this answer was sent to Mr. Hastings, who replied, stating that the fences had not been built. This railroad is in the hands of a receiver, and after further correspondence the general superintendent informed this Board that, "We are doing all we can this year towards the necessary repairs to the fences along the whole line, and will put his fence in condition as soon as we can possibly get to it \* \* \* ." Nothing further was heard from complainant, and the case was closed. (Case No. 3345.)

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### XXX.

JOHN HEAD AGAINST THE POUGHKEEPSIE AND EASTERN RAILWAY COMPANY AS TO FENCES.

July 6, 1905.

This complaint, by John Head, of Boston Corners, against the Poughkeepsie and Eastern Railway Company, was filed with this Board on June 5, 1905. It alleged that the fences of the company along complainant's land were in bad condition. After correspondence, the company informed the Board that the fences had been constructed. A copy of the company's letter was sent to the complainant. Nothing further was heard from complainant and the case was closed. (Case No. 3356.)



## XXXI.

IN THE MATTER OF THE COMPLAINT OF HOMER W. CASE AGAINST THE POUGH-KEEPSIE AND EASTERN RAILWAY COMPANY AS TO FARM CROSSINGS, CATTLE GUARDS, FENCES AND HIGHWAY CROSSINGS.

July 6, 1905.

This complaint, by Homer W. Case, of Clinton Corners, against the Poughkeepsie and Eastern Railway Company, was filed with this Board on May 16, 1905. It complained of the condition of farm crossings and fences of the company along complainant's farm, as to lack of cattle guards at highway crossings, and as to making of flying switches over a highway crossing. A copy of the complaint was sent to the company, which answered that it would build a new fence along complainant's land and put in a farm crossing; that the flying switch in question was made by a milk car and that the man who turns the switch acts as flagman at the crossing until the car is placed. A copy of the answer was sent to complainant, who replied, " \* \* \* He has made satisfactory promises as far as I am concerned, providing he keeps them. If he does not I shall ask in advance to be allowed to reopen the matter \* \* \* ." The company subsequently informed the Board that a new woven wire fence had been built the entire length of complainant's property on both sides of the track, "new gates have been erected, and a suitable crossing put in." Nothing further was heard from complainant, and the case was closed. (Case No. 3344.)

## XXXII.

IN THE MATTER OF A VERBAL COMPLAINT AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AS TO REVERSED OPERATION OF LOCOMOTIVE ENGINES ATTACHED TO TRAINS ON THE ATTICA BRANCH OF SAID COMPANY'S RAILROAD.

July 6, 1905.

A verbal complaint was made to this Board in March, 1905, by F. C. Stevens, of Attica, against the New York Central and Hudson River Railroad Company, alleging that locomotive engines attached to trains on the Attica branch of said company's railroad were operated reversed, and that this method of operation is dangerous to the public. The Board communicated with the company on the subject and after correspondence the company informed the Board that, " \* \* \* We have made arrangements, effective May 15th, with the Erie Railroad, whereby they will permit us to turn our engine on their 'Y' at Attica." The case was closed. (Case No. 3305.)

## XXXIII.

IN THE MATTER OF THE COMPLAINT OF THEODORE S. RUMSEY, JR., AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION) IN RELATION TO BADGES NOT BEING WORN BY TRAIN EMPLOYEES.

July 6, 1905.

This complaint, by Theodore S. Rumsey, Jr., of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division), was filed with this Board on May 26, 1905. It complained that employees on the Manhattan Railway did not wear badges. A copy of the complaint was sent to the company, which answered that, " \* \* \* We have taken steps, however, to have our men provided with badges at once." A copy of this answer was sent to complainant. Nothing further was heard from complainant, and the case was closed. (Case No. 3349.)

## XXXIV.

IN THE MATTER OF THE COMPLAINT OF THE WOODLAWN TAXPAYERS' ASSOCIATION OF NEW YORK CITY AGAINST THE UNION RAILWAY COMPANY AND THE NEW YORK CITY RAILWAY COMPANY IN RELATION TO A CONTINUOUS RIDE FOR ONE FARE.

July 6, 1905.

This complaint, by The Woodlawn Taxpayers' Association of New York city against the Union Railway Company and New York City Railway Company, was filed with this Board on June 16, 1905. It asked this Board "to compel said Union Railway Co. to give a ride from the city limits to the Battery for a five cent fare, giving transfers at all connecting points with the New York City Railway Company." After correspondence with complainants they were informed that, "The Union Railway Company and the New York City Railway Company make separate operating reports to this Board. If it is alleged that they should issue transfers, as stated, the determination in such a matter must be made by the courts. I refer you to section 104 of the Railroad Law, as amended by chapter 676 of the Laws of 1892, as to penalty for failure to issue a transfer where one should be issued, and to decisions of courts in relation to this section and section 78 of the Railroad Law as to lease of railroad." The case was closed. (Case No. 3364.)

## XXXV.

IN THE MATTER OF THE COMPLAINT OF E. L. WOODWARD AGAINST THE BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY COMPANY, THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AND THE ERIE RAILROAD COMPANY, AS TO THE MAKING OF FLYING SWITCHES AT LE ROY.

July 29, 1905.

At page 84, 1st vol. report of this Board for 1904, will be found a statement of this complaint. The cause of complaint was removed. During 1905 Mr. Woodward complained further in relation to flying switches being made on the two railroads named and also on the Erie Railroad. After correspondence with the companies the practice of making these flying switches was stopped. (Case No. 3225.)

## XXXVI.

IN THE MATTER OF THE COMPLAINT OF THE GEORGE W. JUMP COMPANY AGAINST THE CENTRAL NEW ENGLAND RAILWAY COMPANY AND THE POUGHKEEPSIE AND EASTERN RAILWAY COMPANY, AS TO DELAY AND FREIGHT CHARGES ON A CAR OF HAY.

August 24, 1905.

This complaint, by the George W. Jump Company of Brooklyn, was filed with this Board on April 24, 1905. It alleged delay and excessive freight charges on a shipment of hay from the first station east of Poughkeepsie on the Poughkeepsie and Eastern Railway, to complainants in Brooklyn. The Central New England Railway Company answered that the delay, so far as it was concerned, was due to an embargo placed on hay shipments to New York and Brooklyn by other lines. The answer of the Poughkeepsie and Eastern Railway Company was to the same effect as to embargo, and as to the alleged excessive freight charges, that the company was willing to adjust the matter satisfactorily as soon as furnished with the bill of lading and paid freight bill, and that it had notified the consignor to this effect.

Nothing further was heard from complainants, and the case was closed. See other complaints by this complainant under this title in this volume. (Case No. 3336.)

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XXXVII.

IN THE MATTER OF THE COMPLAINT OF J. WALZ AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY IN RELATION TO PASSENGER FARE.

August 24, 1905.

This complaint, by J. Walz, of Morris Park, L. I., against the Brooklyn Heights Railroad Company, was filed with this Board on July 12, 1905. It alleged a charge of 15 cents for passengers from a point on Jamaica Bay to Ozone Park. A copy of the complaint was sent to the company, which answered that, " \* \* \* The rate of fare between the two points mentioned is 15 cents, same being established by the Long Island R. R. Co. Both stations are on the Long Island R. R. and we are governed in the collection of fares on trains which we operate from Broadway Ferry to Rockaway Beach by the tariff sheet of the Long Island R. R. Co. The conductor who collected the fare from Mr. Walz, was, therefore, acting in accordance with established rules \* \* \* ."

A copy of the answer was sent to complainant, who did not reply, and the case was closed. (Case No. 3385.)

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XXXVIII.

IN THE MATTER OF THE COMPLAINT OF D. J. BIENENSTOCK AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO OVERCROWDING OF CARS ON ITS ROCKAWAY AVENUE LINE.

August 24, 1905.

This complaint, by D. J. Bienenstock, of Brooklyn, against the Brooklyn Heights Railroad Company, was filed with this Board on June 20, 1905. It alleged overcrowding of cars of the company on the Rockaway Avenue line. A copy of the complaint was sent to the company, which answered that, " \* \* \* On Thursday night, 15th ultimo, referred to by Mr. Bienenstock, two cars were derailed on the Rockaway Avenue line and these derailments caused irregular headways, and, as a result, some of the cars were overcrowded. The traffic on the Hamburg Avenue line has increased rapidly during the last six months and has necessitated frequent changes in the schedule. A new time-table is in course of preparation at the present time to take effect during this week which will afford increased facilities \* \* \* ."

A copy of the answer was sent to complainant, and the electrical expert of this Board made a report in this matter, that a new schedule was put in effect on this line on July 14, increasing the number of trips per day by thirty. A copy of this report was sent to complainant. Nothing further was heard from complainant, and the case was closed. (Case No. 3369.)

## XXXIX.

IN THE MATTER OF A VERBAL COMPLAINT AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AS TO FREIGHT RATES ON SHIPMENTS OF LIVE STOCK ON ITS NEW YORK AND PUTNAM BRANCH.

August 24, 1905.

In January, 1905, verbal complaint was made to this Board against the New York Central and Hudson River Railroad Company as to alleged excessive freight rates on shipments of live stock from Carmel and other stations on the New York and Putnam branch of said company's railroad, to New York city. Considerable correspondence was had with the company in this matter and a hearing was held in New York city on April 7, at which Charles E. Nichols, the complainant, appeared; George H. Walker appearing for the New York Central and Hudson River Railroad Company. Subsequently the company informed this Board as follows: " \* \* \* We find that the only stations on our Putnam division, from which live stock is shipped to New York city, are Carmel, Baldwin Place, Yorktown and Dunwoodie, N. Y. At each of these places with the exception of Yorktown, there are ample facilities for handling live stock, consisting of live stock pens and loading chutes. At Yorktown it is necessary to load live stock in cars by means of skids, as this company does not possess sufficient land adjacent to our station, upon which live stock pens and loading chutes could be placed, and the quantity of live stock offered for transportation at this station, would not warrant the purchase of additional land for such purposes at the present time. Referring to the request of the complainant for the same rates per head on live stock for transportation in (pick up) cars from Putnam division stations to New York city as chargeable from contiguous stations on our Harlem division to New York city, we are prepared to run a pick-up car from Putnam division stations to New York city on Tuesday of each week, at rates of \$2 per head for cattle, 40 cents per head for calves and hogs, and 30 cents per head for sheep and lambs, subject to a minimum charge per car of \$15, with the understanding, that any deficit between the charges on the live stock at rates per head as named, and the minimum of \$15 per car, will be paid by the complainant. The rates stated, are those which prevail from corresponding stations on our Harlem division to New York city. Upon receipt of advice from your Board or from the complainant that the foregoing proposition is accepted, we will arrange to establish a pick-up car, as above outlined \* \* \* "

A copy of the company's letter was sent to Mr. John R. Yale, representative of the complainant. No reply was received from complainant, and the case was closed. (Case No. 3273.)

## XL.

IN THE MATTER OF THE COMPLAINT OF THEODORE M. ROBBERSON AGAINST THE ERIE RAILROAD COMPANY, AS TO THE CONDITION OF THE FENCES OF SAID COMPANY ALONG HIS FARM AND AS TO THE CUTTING OF CANADA THISTLES AND WEEDS ON ITS RIGHT OF WAY ALONG HIS FARM.

August 24, 1905.

At page, 48, 1st vol. of the report of this Board for 1904, will be found the complaint of Theodore M. Roberson (by A. S. Embler), of the town of Crawford, Orange county, against the Erie Railroad Company, as to the condition of the fences of the company along complainant's farm, and as to the alleged neglect of the company to cut Canada thistles and weeds on its right of way along his farm. The company informed the Board that the cause of complaint would be removed. On August 8, 1905, Mr. Embler, for complainant, filed with the Board another complaint, alleging

that the thistles and weeds had not been cut, a copy of which complaint was sent to the company. The company answered, " \* \* \* We have, however, issued instructions that all weeds and thistles must be removed without any further delay." A copy of the answer was sent to complainant. Nothing further was heard from complainant, and the case was again closed. (Case No. 3209.)

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**XLI.**

**IN THE MATTER OF THE COMPLAINT OF W. L. FORD, CLERK OF THE VILLAGE OF PITTSFORD, AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY (WEST SHORE RAILROAD, LESSOR).**

August 24, 1905.

This complaint, by W. L. Ford, clerk of the village of Pittsford, against the New York Central and Hudson River Railroad Company (West Shore Railroad, lessor), was filed with this Board on July 13, 1905. It alleged that an electric highway crossing warning bell had been installed at the Monroe avenue crossing of the West Shore Railroad in said village, but had not been placed in operation. A copy of the complaint was sent to the company, which answered, after correspondence, that, " \* \* \* The bell was placed in service at 12 o'clock noon, Saturday, July 22nd \* \* \* ." A copy of the answer was sent to complainant. Nothing further was heard from complainant, and the case was closed. (Case No. 3386.)

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**XLII.**

**IN THE MATTER OF THE COMPLAINT OF H. D. LOVE AGAINST THE CATSKILL MOUNTAIN RAILWAY COMPANY AS TO PHYSICAL CONDITION OF SAID COMPANY'S RAILWAY AND THE OPERATION OF PASSENGER TRAINS THEREON.**

August 24, 1905.

This complaint, by H. D. Love against the Catskill Mountain Railway Company, was filed with this Board on August 17, 1905. It complained of the methods of operation of passenger trains on said company's railway, on the score of safety. A copy of the complaint was sent to the company, which answered, denying the statements in the complaint. A copy of the answer was sent to complainant, who replied. An inspection of the railway was made by an inspector of this Board in the usual course this year, and such recommendations as were made appear in this volume under the title "Inspections." The case was closed. (Case No. 3403.)

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**XLIII.**

**IN THE MATTER OF THE COMPLAINT OF F. W. GARDNER AGAINST THE BOSTON AND MAINE RAILROAD, AS TO WEEDS ON ITS RIGHT OF WAY NEAR PETERSBURGH JUNCTION.**

August 24, 1905.

This complaint, by F. W. Gardner against the Boston and Maine Railroad, was filed with this Board on July 6, 1905. It alleged that the company did not cut the weeds on its right of way along complainant's farm near Petersburg Junction. A copy of the complaint was sent to the company, which answered that, " \* \* \* The weeds were cut July 18th, and I trust that conditions of our road at that point are now satisfactory \* \* \* ." A copy of the answer was sent to complainant. Nothing further was heard from complainant, and the case was closed. (Case No. 3381.)

## XLIV.

IN THE MATTER OF THE COMPLAINT OF ARTHUR C. FERGUSON AGAINST THE TROY AND NEW ENGLAND RAILWAY COMPANY AS TO PHYSICAL CONDITION OF ITS RAILWAY.

September 16, 1905.

At page 47, 1st vol., 1904 report of this Board, will be found a statement as to this complaint, which was in relation to the physical condition of the Troy and New England Railway, and the action of this Board in the matter. Since the report of last year an additional inspection and report have been made by an inspector of this Board, particularly as to the condition of the structures, and recommendations of improvement were made to the company, the inspector also reporting that the company was rebuilding the structures on its line. Another report, or reports, in the matter will be made. (Case No. 2886.)

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## XLV.

IN THE MATTER OF THE COMPLAINT OF JULIAN SCHOLL & COMPANY AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY (WEST SHORE RAILROAD, LESSOR).

October 10, 1905.

This complaint, by Julian Scholl & Company, against the New York Central and Hudson River Railroad Company (West Shore Railroad, lessor), was filed with this Board on September 11, 1905. It complained as to a charge of \$10 made by the West Shore Railroad for switching cars from the Ulster and Delaware Railroad. A copy of the complaint was sent to the company. Before the company answered a letter was received from complainants stating that, " \* \* \* This has been adjusted and we hereby request you not to take any further action in the matter \* \* \* ." The case was closed. (Case No. 3416.)

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## XLVI.

IN THE MATTER OF THE COMPLAINT OF MISS A. A. BURKE AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO THE CONDITION OF PASSENGER CARS.

October 10, 1905.

This complaint, by Miss A. A. Burke of Flatbush, Brooklyn, against the Brooklyn Heights Railroad Company, was filed with this Board on September 9, 1905. It alleged that the cars of said company on its Ocean Avenue line were in poor condition, one specific instance being given of rain entering an open car through a broken window. A copy of the complaint was sent to the company, which answered that the day in question was extremely stormy and that the window in the car referred to was broken on that day. A copy of the answer was sent to complainant. No reply was received from complainant and the case was closed. (Case No. 3415.)

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## XLVII.

IN THE MATTER OF THE COMPLAINT OF THE WEST END BOARD OF TRADE OF BROOKLYN AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO DISCONTINUANCE OF LINES OF PASSENGER CARS.

October 10, 1905.

This complaint, by the West End Board of Trade of Brooklyn, New York city, against the Brooklyn Heights Railroad Company, was filed with this

Board on September 1, 1905. It alleged that the company proposed to discontinue a line of passenger cars from the Thirty-ninth Street ferry, Brooklyn, and proposed other changes of routes of cars. A copy of the complaint was sent to the company, which answered that, " \* \* \* I have asked Mr. Seaver (representing complainants) and others interested in the Thirty-ninth Street Ferry service to go over this matter with me at this office on Monday morning next, \* \* \* and would request that a representative of the Railroad Commission be present." The electrical expert of the Board was instructed to attend said conference, which he did and reported, under date of September 20, as follows:

" \* \* \* After a thorough discussion of the subject under consideration the following agreement was reached: The railroad company agrees to immediately (next Monday) restore the Bay Ridge Avenue-Eighty-fifth Street-Thirty-ninth Street Ferry line during two hours in the morning and evening via Second avenue. They also agree to make a transfer at Thirty-ninth street and Third avenue, all cars. They also agree to restore immediately (next Monday) the service on the Thirty-ninth Street-Fort Hamilton line, during the same hours, via Third avenue. The representatives of the various organizations present expressed entire satisfaction with the above agreement. \* \* \*

A copy of this report was sent to complainants and the case closed. See matter of Arnold Schramm against this company under this title in this volume. (Case No. 3411.)

#### XLVIII.

IN THE MATTER OF THE COMPLAINT OF RAYMOND C. SPAULDING AGAINST THE UNION RAILWAY COMPANY AS TO ALLEGED DANGEROUS SPOT IN THE NORTH RAIL OF THE EASTBOUND TRACK IN SAID COMPANY'S RAILWAY A LITTLE BELOW BEDFORD AVENUE AND EAST SIXTH STREET, MOUNT VERNON.

October 10, 1905.

This complaint, by Raymond C. Spaulding, against the Union Railway Company, was filed with this Board on September 13, 1905. It alleged that there existed a dangerous spot in the north rail of the eastbound track of the Union Railway a little below Bedford avenue and East Sixth street, Mount Vernon. A copy of the complaint was sent to the company, which answered. A copy of the answer was sent to the complainant. A report in the matter was made by the electrical expert of this Board, and the Board recommended to the company as follows:

" 1. That a 'slow' sign should be placed at the top of the hill west of Dunham avenue, and that all cars operated down this grade should not exceed a rate of speed of ten miles per hour.

" 2. That at the first grade east of the junction a 'slow' sign should be placed at the top of the hill for cars running east, and cars going down the hill should not exceed a rate of speed of ten miles per hour.

" 3. That on the grade approaching the junction a 'stop' sign should be placed at the top of the hill for cars going west, and all cars in that direction should be brought to a full stop at this point."

The complainant was so notified and replied, reasserting that the track should be repaired. A further report in the matter was made by the electrical expert of the Board, who reported that, " \* \* \* Operation over this portion of the track in compliance with the Board's recent recommendations will be safe as far as the condition of the rail is concerned. I have talked with Mr. Spaulding on this subject and informed him of my opinion of the condition of the track at the point mentioned, and assured him that the matter of the condition of this portion of the track would be the subject of future investigation, and when the slight depressions now existing at some of the joints become serious enough to warrant it, a recommendation would be made for their repair, or the reconstruction of the track. \* \* \*

The company informed the Board that the recommendations above quoted would be complied with. The case was closed. Subsequently a report was received from an inspector of this Board to the effect that the track in question was in good condition and that the recommendations of the Board were being complied with. (Case No. 3418.)

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XLIX.

IN THE MATTER OF THE COMPLAINT OF W. J. EVANS AGAINST THE BUFFALO,  
ROCHESTER AND PITTSBURGH RAILWAY COMPANY.

October 10, 1905.

This complaint, by W. J. Evans, traffic manager, Peoria, Ill., against the Buffalo, Rochester and Pittsburgh Railway Company, was filed with this Board September 20, 1905. It alleged that that company had charged \$21.70 as a switching charge on a car shipped by the Peoria Cordage Company from Peoria, Ill., to the Union Transfer and Storage Company at Rochester. A copy of the complaint was sent to the company, which answered that the charge was not a switching charge but that the instance referred to was for a considerable haul over the Lehigh Valley Railroad and the Buffalo, Rochester and Pittsburgh Railway with delivery to the New York Central and Hudson River Railroad, including terminal charge, the Buffalo, Rochester and Pittsburgh Railway "being simply an intermediate connection in the transaction."

A copy of the answer was sent to complainant. No reply was received from complainant and the case was closed. (Case No. 3422.)

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L.

IN THE MATTER OF THE COMPLAINT OF S. W. TURNER AGAINST THE INTER-  
BOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION).

October 10, 1905.

This complaint, by S. W. Turner of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division), was filed with this Board on December 13, 1904. It alleged that at the One Hundred and Sixteenth street-Ninth avenue elevated station the stairways leading to the station were inadequate and elevators in operation were also inadequate. It also complained as to the operation of trains on the Third Avenue Elevated line, which complaint is not treated at this time. The electrical expert of the Board made a report as to the One Hundred and Sixteenth street station, and the following recommendations were made to the company as to this station, and the complainant so notified:

"1. That the uncovered portions of platforms be immediately covered.  
"2. That the stairs leading from the upper elevator landing to the street be widened.

"3. That the equipment of the elevators be changed so as to double their present speed, this work to be completed as soon as possible."

The company answered, " \* \* \* I have to say that Mr. Barnes is wrong in the statement that no change has been made in the elevators at that point in many years. As a matter of fact, new iron elevator cars have been substituted for the two west elevators, and extra exits cut from these elevators at both upper and lower landings. We have replaced the steam pumps with electric pumps, increasing the speed to 300 feet per minute, which we consider the maximum speed for safety at that point. We believe that these improvements give ample accommodations. Most of the platform space at this station is covered, affording passengers sufficient protection from the wind and weather while waiting for trains. \* \* \*"



The electrical expert further reported in this matter that, " \* \* \* I submit that the statements in the report were practically correct at the time the report was made. The installation of the electric pumps, increasing the speed to 300 feet per minute, has been made since the date of the report, and the increase of speed was one of the requirements mentioned in the recommendations. Mr. Bryan's (vice-president) statement, 'Most of the platform space at this station is covered, affording passengers sufficient protection from the wind and weather while waiting for trains,' needs no comment, as statements in the report give the exact number of feet of uncovered platform which must be used by passengers boarding and leaving some of the cars of six-car trains. \* \* \*"

After further correspondence with the company, it informed the Board that, " \* \* \* At the time the original report of March 11 was received by me, I had our inspectors carefully watch the situation at that point, and there seemed to be no congestion at that time. Since then there has been a very heavy decrease in the number of passengers using the One Hundred and Sixteenth street station, this no doubt owing to their using, more and more, the One Hundred and Sixteenth street station, Lenox Avenue line, of the Subway. For instance, for the last four months the decrease has been as follows:

April . . . . .	199,298
May . . . . .	161,057
June . . . . .	121,871
July . . . . .	98,728
Total decrease . . . . .	580,954

or at the rate of more than 1,500,000 per annum. The portion of the platforms covered is in accord with the new stations erected on the elevated portion of the Subway and approved by the Rapid Transit Commission. The majority of the station platforms—116—are provided with canopies and roofs, and there is never a condition at these stations where passengers waiting for trains have to go out from under the roof. \* \* \*

The electrical expert made another report in the matter, as follows:

" \* \* \* Observations of traffic conditions at this station, made from time to time since the original report, dated January 23, 1905, on Mr. Turner's complaint was made, confirm the statements made by Mr. Bryan in reference to the reduction in traffic at the One Hundred and Sixteenth street station. For this reason, and the fact that the elevator service has been improved to such an extent that the morning rush hour travel is now properly taken care of by it, and no necessity exists for passengers walking up the stairs during those hours, I would suggest that the Board's recommendation 'That the stairs leading from the upper elevator landing to the street be widened' be withdrawn. The report dated January 23, 1905, on Mr. Turner's complaint of conditions at this station contains the following: 'On the Ninth avenue station there are 120 feet of open platform which must be used by passengers boarding and leaving some of the cars of a six-car train. The condition still exists. \* \* \*'"

The case was closed. (Case No. 3275.)

## LI.

IN THE MATTER OF THE COMPLAINT OF J. H. WATERFORD AGAINST THE BUFFALO SOUTHERN RAILWAY COMPANY AS TO OPERATION OF CARS.

October 10, 1905.

This complaint, by J. H. Waterford, against the Buffalo Southern Railway Company, was filed with this Board on July 19, 1905. It alleged that a practice of the company in operating trailer cars ahead of a motor car at the city line of Buffalo on Seneca street was dangerous. A copy of the com-

plaint was sent to the company, which answered. A report in the matter was made by the electrical expert of the Board, to the following effect:

"I have the assurance of Mr. Keller, who is in charge of the operation of the road, and also Mr. Rumsey, the secretary of the company, that orders would be immediately issued and enforced which will prevent trailer cars being operated ahead of motor cars."

The case was closed. (Case No. 3391.)

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### LII.

#### DANIEL GOLDSCHMIDT AGAINST THE CATSKILL MOUNTAIN RAILWAY COMPANY AS TO PASSENGER FARE CHARGED.

October 10, 1905.

This complaint, by Daniel Goldschmidt of New York city, was filed with this Board on September 14, 1905. It alleged that the Catskill Mountain Railway Company charges passengers \$1 fare from Catskill to Cairo and vice versa, and sells an excursion ticket from Cairo to Catskill and return to residents of Cairo for \$1.10. A copy of the complaint was sent to the company, which answered that under the statute it had a right to charge \$1.20 from Catskill to Cairo and charged but \$1, and that it did issue an excursion ticket from Cairo to Catskill and return for \$1.10 but that this ticket is sold to any person, native or tourist. A copy of this answer was sent to complainant, who replied. After consideration of the matter, this Board informed the complainant that it would seem that the company has the right under the statutes (chapter 532, Laws of 1885, and section 37 of the Railroad Law) to charge more than it does charge from Catskill to Cairo, and the case was closed. (Case No. 3419.)

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### LIII.

#### IN THE MATTER OF THE COMPLAINT OF W. W. HARE AGAINST THE ITHACA STREET RAILWAY COMPANY AS TO THE RATE OF FARE AND ACCOMMODATIONS FURNISHED THE PUBLIC.

October 10, 1905.

This complaint, by W. W. Hare of Groton, N. Y., against the Ithaca Street Railway Company, was filed with this Board on September 26, 1905. It alleged that the company charged 10 cents fare on a portion of its line and that it did not furnish sufficient cars. A copy of the complaint was sent to the company, which answered that, " \* \* \* I desire to say, while no doubt it is true there are times when the cars to and from the station are overcrowded, owing to the fact that we have no means of knowing just what car service is required at all times, especially from the railroad station to Ithaca. On Monday and Saturday mornings, however, in order to afford better service to the public from the incoming trains we have found it advisable to put on one and sometimes two extra cars and at such other times during the week when in our opinion extra cars would be required. \* \* \* " A copy of this answer was sent to complainant and he was informed that, under section 100 of the Railroad Law, in a city of the third class or an incorporated village it is lawful for such a company to charge a maximum rate of fare for each passenger of 10 cents where such passenger is carried in a car which overcomes an elevation of at least 450 feet within a distance of 1½ miles. No reply was received from complainant and the case was closed. (Case No. 3423.)

## LIV.

**IN THE MATTER OF THE COMPLAINT OF ARNOLD SCHRAMM AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO SERVICE RENDERED THE PUBLIC FROM THE THIRTY-NINTH STREET FERRY, BROOKLYN, TO BENSONHURST.**

October 10, 1905.

This complaint, by Arnold Schramm of New York city, against the Brooklyn Heights Railroad Company, was filed with this Board on July 17, 1905. It alleged that the service rendered the public by this company from the Thirty-ninth Street ferry to Bensonhurst was inadequate. A copy of the complaint was sent to the company, which answered that, " \* \* \* Our operating department has carefully investigated the conditions and arranged to operate a few additional trips between the hours of 5:30 and 6:30 p. m. to lessen the over-crowding of cars. It has been our practice to operate cars from Thirty-ninth Street ferry every 20 minutes to meet the arrival of the boats, with a few additional cars to take care of excursion riding as the conditions require and our supply of car crews will permit. We have been unable at times to operate as many cars as the traffic demanded by reason of shortage of car crews. I have directed our operating department to watch this matter carefully during the remainder of the summer season and endeavor to overcome this complaint. \* \* \*"

A report in the matter was made by the electrical expert of this Board. The Board recommended to the company, "That the company arrange to have two Coney Island-Fifth Avenue cars at the terminal on the arrival of all Thirty-ninth Street ferry-boats between the hours of 5:30 and 6:50 p. m.

The company informed the Board that, " \* \* \* We have recently rearranged the service on all lines running from Thirty-ninth Street ferry and at a hearing held in this office on the 14th instant in respect to the present service, at which Mr. Barnes (the Board's electrical expert) was present, we agreed to make certain changes in the service commencing to-day, Monday, September 18, in accordance with the request of the various interested parties. Copy of the minutes of the conference referred to is enclosed herewith and the electrical expert has also been furnished with a copy. The Coney Island traffic has materially lessened in the past week, which seems to render unnecessary a strict compliance with the recommendations made by the electrical expert on July 31 last. \* \* \*"

A copy of this letter was sent to complainant and the case was closed. See matter on West End Board of Trade against this company under this title in this volume. (Case No. 3389.)

## LV.

**IN THE MATTER OF THE COMPLAINT OF J. C. BRACKENRIDGE, COMMISSIONER OF PUBLIC WORKS, BOROUGH OF BROOKLYN, NEW YORK CITY, AGAINST THE LONG ISLAND RAILROAD COMPANY.**

October 10, 1905.

This complaint, by J. C. Brackenridge, Commissioner of Public Works of the borough of Brooklyn, New York city, against the Long Island Railroad Company, was filed with this Board on March 31, 1905. It alleged that the use of the electric third rail for motive power was unsafe. A report in this matter was made by the electrical expert of this Board, who reported that, " \* \* \* The method of placing the third rail and of protecting it employed on the Atlantic Avenue division is as good as any at present in use; hence, I can see no reason why your Honorable Board should take action to prevent its completion and use. \* \* \*"

A further report as to the use of the third rail by this company was made by the electrical expert, and the Board recommended to the company

(the recommendation referring to all points where the third rail is used by the company), "That the protection on the rail at street crossings be extended a proper distance beyond the end of the rail, to prevent persons coming in contact with it."

The company informed this Board that this recommendation would be complied with. This case was closed. It may be said that this Board is keeping informed as to the protection of third rail where it is used and proposed to be used, with a view to such further action in the future in relation thereto as may be found to be necessary. (Case No. 3320.)

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#### LVI.

**IN THE MATTER OF THE COMPLAINT OF CHRISTOPHER W. RILEY AND OTHERS  
AGAINST THE UNITED TRACTION COMPANY AND THE COHOES RAILWAY COM-  
PANY AS TO OPERATION OF CARS.**

November 10, 1905.

This complaint, by Christopher W. Riley and others of Rensselaer, against the United Traction Company and the Cohoes Railway Company, as to operation of cars and failure to operate cars in Rensselaer and between Rensselaer and Albany, was filed with this Board on May 31, 1905. A public hearing in the matter was given by the Board on June 15. At this hearing counsel for complainants stated that they did not wish to proceed owing to pending matters of agreement between representatives of the city of Rensselaer and the companies; counsel for the companies also addressed the Board on the subject. The hearing was adjourned without date pending the result of such matters of agreement. Nothing further have been heard from the complainants, the matter was on this date closed. (Case No. 3354.)

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#### LVII.

**THE MERCHANTS' ASSOCIATION OF NEW YORK CITY IN RELATION TO CONDITION  
OF PASSENGER TRANSPORTATION IN THE BOROUGH OF MANHATTAN AND THE  
BRONX.**

November 10, 1905.

This matter came before this Board through correspondence from The Merchants' Association, and on July 29, 1904, William F. King and other representatives of The Merchants' Association appeared before this Board and were heard as to then existing conditions of passenger transportation in the boroughs of Manhattan and the Bronx, New York city. L. J. Callanan also appeared at that time for himself as to operation of cars of the New York City Railway on Sixth avenue running to the South ferry. As to the complaint of Mr. Callanan the electrical expert of this Board reported, under date of December 21, 1904, that, " \* \* \* There appears to be sufficient number of cars operated on the Sixth Avenue line below Twenty-third street to accommodate travel. \* \* \* " After hearing statements of The Merchants' Association on July 29, the hearing was adjourned until Wednesday, August 3, 1904. Before August 3 The Merchants' Association requested this Board to postpone this hearing "to a future date agreeable to your Commission and committee." The Board so postponed the hearing, and nothing further in the matter having been heard from The Merchants' Association the case was closed on November 10, 1905. (Case No. 3151.)

## LVIII.

IN THE MATTER OF THE COMPLAINT OF THE TAXPAYERS' NON-PARTISAN ASSOCIATION, THIRD WARD, BOROUGH OF QUEENS, COLLEGE POINT, CITY OF NEW YORK, AGAINST THE NEW YORK AND QUEENS COUNTY RAILWAY COMPANY AS TO OPERATION OF CARS TO COLLEGE POINT.

November 10, 1905.

This complaint, by the Taxpayers' Non-partisan Association, Third Ward, borough of Queens, College Point, city of New York, against the New York and Queens County Railway Company, was filed with this Board on June 20, 1905. It was in reference to the system of transferring passengers for College Point at Flushing, and alleged that through cars should be run from Long Island City to College Point; it also complained of the condition of the cars of the company. A copy of the complaint was sent to the company, which answered. A copy of the company's answer was sent to complainants, who did not reply. A report in this matter was made by the electrical expert of this Board as follows:

" \* \* \* The direct line of travel over this company's system, between Long Island City and Flushing and College Point, is via the Jackson Avenue line. Previous to June 28, all cars were operated through between Flushing and Long Island City, the College Point passengers being obliged to transfer at Lawrence street, Flushing. This transfer is the subject of the complaint mentioned, which is dated June 17. Since June 28 the company have been operating through cars between College Point and Long Island City, via Jackson avenue, from 6:30 to 8:30 a. m. and from 5:30 to 7 p. m, on a ten-minute headway. These cars are operated in connection with the Flushing cars which during the hours mentioned are run on a seven-minute headway. At other times the cars on the Jackson Avenue route are all operated between Flushing and Long Island City on a ten-minute headway. College Point passengers transferring as formerly at Lawrence street. To accommodate the College Point travel between Lawrence street and College Point, the company are operating three cars, which are run on a ten-minute headway. This distance is two and four-tenths (2.4) miles, and the running time is twelve minutes. The company maintain a waiting-room at the transfer point at Lawrence street. In the matter of the condition of cars mentioned in the complaint, my investigation was made on July 20, and on that date I found that all of the cars in operation were in fair condition. Ten new cars were put in service last spring, and ten more new ones are expected to be received September 15. Flushing has a greater population than College Point. The number of cars operated on the Jackson Avenue line during the non-rush hours is more than sufficient to accommodate the combined traffic of both of these places. If cars were to be operated through to College Point during the non-rush hours, it necessarily would be done by splitting the headway to Flushing, and at the detriment of the service to that point. Under such an arrangement, between 8:30 and 1 o'clock College Point cars would be operated on a twenty-minute schedule, whereas they now have a ten-minute service. The company's records do not show that such a method of operation would be justified, but if the present arrangement is not satisfactory to the Taxpayers' Non-partisan Association, further investigation of the traffic conditions during non-rush hours will be made. \* \* \*"

A copy of this report was sent to complainants, who did not reply. The case was closed. (Case No. 3365.)

## LIX.

IN THE MATTER OF THE COMPLAINT OF THE ALLIED CIVIC ASSOCIATIONS OF THE FOURTH WARD, BOROUGH OF QUEENS, NEW YORK CITY, AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO ALLEGED INADEQUATE TRANSIT FACILITIES FURNISHED THE PUBLIC ON JAMAICA AVENUE, BOROUGH OF QUEENS.

November 10, 1905.

This complaint, by the Allied Civic Associations of the Fourth Ward, borough of Queens, New York city, against the Brooklyn Heights Railroad Company, was filed with this Board on December 30, 1904. It alleged that the company furnished inadequate transit facilities on Jamaica avenue, borough of Queens, and asked that a hearing be given complainants. The complaint was joined in by other associations and persons. Hearings in this matter were given by this Board at its office in New York city on January 25, and in Brooklyn on February 1, 1905. H. P. Englehardt, president of the Allied Civic Associations; W. P. Beach, secretary of the Allied Civic Associations, also representing the West End Citizens' League; Michael Carter, of the Jamaica Citizens' Association; T. S. Affleck, first vice-president of the Allied Civic Associations and a member of the Jamaica Citizens' Association; Frank Bennett, of the West End League, and Messrs. Baker, Griffiths, W. R. Pierce and George W. Bartholf appeared for complainants. E. W. Winter, president, D. S. Smith, general superintendent, and C. A. Collin, counsel, appeared for the company. At the hearing on January 25 the company agreed to improve the service. A question arose as to transfers from the Brooklyn Union Elevated Railroad (operated by the Brooklyn Heights Railroad Company) to the surface cars of the Brooklyn Heights Railroad Company, and this Board asked the opinion of the Attorney-General as to the jurisdiction of the Board in such matter, and at his request asked complainants and the company to submit briefs to him on the question, which the complainants and the company agree to do. Nothing further being heard in the matter, the case was closed. (Case No. 3371.)

## LX.

IN THE MATTER OF THE COMPLAINT OF THE REPUBLICAN UNION OF THE TWENTY-EIGHTH ASSEMBLY DISTRICT OF NEW YORK COUNTY AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY, AS TO SERVICE RENDERED THE PUBLIC ON THE SECOND AND THIRD AVENUE LINES OF THE MANHATTAN RAILWAY (LEASED TO AND OPERATED BY THE INTERBOROUGH RAPID TRANSIT COMPANY).

November 10, 1905.

This complaint, by the Republican Union of the Twenty-eighth Assembly District of New York County against the Interborough Rapid Transit Company, was filed with this Board on December 24, 1904. It alleged inadequate service rendered to the public by the company on the Second and Third Avenue lines of the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company), and complained of lack of sufficient stairways at the Eightieth Street station, up-town side, Second Avenue line. A copy of the complaint was sent to the company, which answered that, " \* \* \* Our car mileage on this division has increased considerably, as compared with previous years. In relation to the station at Eightieth street, Second avenue, we already have in mind plans which will change the entire station at that point. \* \* \* " A copy of this answer was sent to complainants. No reply was received from complainants, and the case was closed. (Case No. 3268.)

## LXI.

IN THE MATTER OF THE COMPLAINT OF BAYER & MCCONIHE AGAINST THE  
TROY AND NEW ENGLAND RAILWAY COMPANY (ELECTRIC).

November 10, 1905.

This complaint, by Bayer & McConihe of Troy, against the Troy and New England Railway Company (electric), was filed with this Board on April 15, 1905. The complaint, while relating to freight service, was not definite, and complainants were asked to make it more definite. No reply was received from complainants, and the case was closed. (Case No. 3333.)

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## LXII.

IN THE MATTER OF THE COMPLAINT OF THE COMMON COUNCIL OF THE CITY  
OF YONKERS AGAINST THE YONKERS RAILROAD COMPANY.

November 10, 1905.

This complaint, by the Common Council of the City of Yonkers against the Yonkers Railroad Company, was filed with this Board on February 20, 1905. It asked this Board to visit Yonkers and conduct an investigation with a view to improving the service rendered the public by the Yonkers Railroad Company. The city clerk was informed that before the Board would consider the matter of holding a hearing in Yonkers, "The complaint as to service rendered the public by this company must be made more specific and in some detail, setting forth the matters complained of." Nothing further was heard from complainants, and the case was closed. (Case No. 3301.)

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## LXIII.

IN THE MATTER OF THE COMPLAINT OF R. J. CALDWELL AGAINST THE BROOKLYN  
HEIGHTS RAILROAD COMPANY.

November 10, 1905.

This complaint, by R. J. Caldwell, of Brooklyn, against the Brooklyn Heights Railroad Company, was filed with this Board on September 13, 1905. It was in relation to protection of the third rail and protection at curves on the elevated railroad lines of said company. Complainant was informed that he might appear before this Board at its office in New York city, October 18, in relation to the matter. Complainant did so appear, and after a hearing did not contend that his complaint was well founded. The case was closed. (Case No. 3433.)

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## LXIV.

IN THE MATTER OF THE COMPLAINT OF THE GEORGE W. JUMP COMPANY AGAINST  
THE CENTRAL NEW ENGLAND RAILWAY AS TO DELAY AND FREIGHT CHARGES  
ON A CAR OF HAY.

November 10, 1905.

The matter of this complaint is treated under this title in this volume, No. XXXVI. This case was closed. See also No. XVI. (Case No. 3335.)

## LXV.

IN THE MATTER OF THE COMPLAINT OF WALTER RAYMONT AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO THE OPERATION OF CARS ON THE CALVARY CEMETERY LINE OF SAID COMPANY'S RAILROAD.

November 10, 1905.

This complaint, by Walter Raymont, of Brooklyn, against the Brooklyn Heights Railroad Company, was filed with this Board on September 2, 1905. It alleged that the company should operate a car on its Calvary Cemetery line after 12:15 a. m. on week days, and after 12 a. m. on Sundays. A copy of the complaint was sent to the company, which answered. A report in the matter was made by the electrical expert of this Board and this Board recommended to the company that two additional trips be run on this line after 12:15 a. m.,—one to be scheduled at 12:45 a. m. and the other at 1:15 a. m. The company informed the Board that this recommendation had been complied with. The case was closed. (Case No. 3414.)

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## LXVI.

IN THE MATTER OF THE COMPLAINT OF THE OLEAN STREET RAILWAY COMPANY AGAINST THE PITTSBURG, SHAWMUT AND NORTHERN RAILROAD COMPANY.

November 10, 1905.

This complaint, by the Olean Street Railway Company against the Pittsburgh, Shawmut and Northern Railroad Company, was filed with this Board on October 11, 1905. It alleged that the steam railroad company had pushed a derrick car against a bridge used by cars of the Olean Street Railway Company on State street, Olean, "nearly knocking it down and considerably damaging it." A copy of the complaint was sent to the steam railroad company, which answered that, " \* \* \* The conductor in charge of the train containing the derrick car omitted to ascertain in advance on approaching the bridge of the Olean Street Railway Company, at State street in Olean, that the derrick car would not pass under the bridge," and that the clearance of the bridge should be greater. A copy of this answer was sent to the complaining company, which replied, and the case was closed. (Case No. 3431.)

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## LXVII.

IN THE MATTER OF THE COMPLAINT OF GEORGE C. HILLS AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO THE LOCKING OF REAR DOORS OF CARS IN ELEVATED RAILROAD TRAINS.

November 10, 1905.

This complaint, by George C. Hills, of Brooklyn, against the Brooklyn Heights Railroad Company was filed with this Board on October 18, 1905. It protested against the practice of locking the rear doors of cars in trains arriving from Bath Beach or Seventy-fourth street, at the Thirty-sixth street station on the elevated line operated by said company. A copy of the complaint was sent to the company, which answered that a notice had been posted by the superintendent of its elevated lines requiring all end doors of cars to remain unlocked while trains were in service. A copy of this answer was sent to complainant, who replied, and the case was closed. (Case No. 3437.)



## LXVIII.

IN THE MATTER OF THE COMPLAINT OF C. W. BLY IN RELATION TO A STEAM RAILROAD USED FOR CONSTRUCTION PURPOSES BEING CONSTRUCTED ALONG THE PUBLIC HIGHWAY IN THE TOWNS OF PITTSFORD AND PERINTON, MONROE COUNTY.

November 10, 1905.

This complaint, by C. W. Bly, of Pittsford, was filed with this Board on October 17, 1905. It alleged that a construction company was engaged in building a steam railroad along a public highway in the towns of Pittsford and Perinton, Monroe county, "without the consent of the property owners or any one else as near as I can learn." A report in the matter was made by an inspector of the Board, from which it appears that the construction company in question is building a street surface electric railroad in the locality in question, and that the steam railroad is being used in the construction work and will be removed when construction is finished; also that the construction company had arranged with property owners for the construction of that portion of the temporary steam railroad on private right of way and have the highway commissioners' consents for the construction of that portion of the temporary railroad which is on the highways. The complainant informed this Board, "I think that everything will now be settled satisfactory to all parties," and the case was closed. (Case No. 3438.)

## LXIX.

IN THE MATTER OF THE COMPLAINT OF B. W. DINSMORE AGAINST THE NEW YORK CITY RAILWAY COMPANY IN RELATION TO NOISE MADE BY CARS ON AMSTERDAM AVENUE, NEW YORK CITY.

November 10, 1905.

This complaint, by B. W. Dinsmore, of New York city, against the New York City Railway Company, was filed with this Board on June 26, 1905. It alleged that cars of said company were allowed to make unnecessary noise on Amsterdam avenue in the locality where complainant lived. A copy of the complaint was sent to the company, which answered, " \* \* \* Upon investigation it was found that an occasional car made unnecessary noise on account of some needed adjustment in the running gear. The matter was taken in hand at once and the general master mechanic instructed to remove all cause for complaint as far as possible. The transportation department was also instructed to minimize the noise in Mr. Dinsmore's neighborhood \* \* \* " A copy of the company's answer was sent to the complainant, who replied, reiterating the complaint. A report in the matter was made by the electrical expert of this Board, to the following effect: " \* \* \* On July 19, 1905, between the hours of 10 and 12 p. m., I made an investigation of the noise made by cars in front of Mr. Dinsmore's house. During that time I observed that two cars passed on flat wheels also three with worn gears and pinions, which made an unusual noise. None of the other cars run made more than the usual amount of noise made by trolley cars running up slight grades such as exist at this point \* \* \* " The attention of the company was called to the statement in the report as to two cars with flat wheels and three with worn gears and pinions, the company replying that, " \* \* \* I would state that it is our rule to not start a car with a flat wheel from car barns for operation on the Amsterdam avenue, or any other line, and it seems to be impossible to avoid flat wheels at all times, but when flat spots are made, the cars are taken off the run as soon as possible. The inspectors are all carefully instructed to report cars making unusual noise to their division office, and arrangements are made to withdraw them from the service. While there may have been some cause at some particular

time for Mr. Dinsmore's complaint, I feel perfectly safe in saying that as a rule the cars on Amsterdam line are in general good condition and operated so as to give the least possible cause for complaint \* \* \*."

A copy of this reply was sent to complainant. Nothing further was heard from complainant, and the case was closed. (Case No. 3377.)

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LXX.

IN THE MATTER OF THE COMPLAINT OF CLAYTON L. EARLY, FOR A CLIENT,  
AGAINST THE NEW YORK AND PENNSYLVANIA RAILROAD COMPANY AS TO  
FENCES.

November 10, 1905.

This complaint, by Clayton L. Early, of Andover, for a client, against the New York and Pennsylvania Railroad Company, was filed with this Board on September 1, 1905. It alleged lack of fence of said company along said client's farm. A copy of the complaint was sent to the company, which answered that the fence had been constructed. A copy of this answer was sent to complainant. Nothing further was heard from complainant, and the case was closed. (Case No. 3410.)

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LXXI.

IN THE MATTER OF THE COMPLAINT OF HADDOCK, BLANCHARD & Co. AGAINST  
THE ULSTER AND DELAWARE RAILROAD COMPANY AS TO SWITCHING CHARGE.

November 10, 1905.

This complaint, by Haddock, Blanchard & Co., of Binghamton, against the Ulster and Delaware Railroad Company, was filed with this Board on October 21, 1905. It is in reference to a switching charge of \$10 a car on two cars of coal shipped to Brown's station on the Ulster and Delaware Railroad, the cars reaching the Ulster and Delaware Railroad from the West Shore Railroad at Kingston, the complaint stating that, " \* \* \* The shipment of the coal above referred to was consigned from the mines in Pennsylvania through to Brown Station, N. Y., and the Ulster and Delaware Railroad Co. inform us that the switching charge referred to was for switching the coal from the tracks of the West Shore Railroad at Kingston, N. Y., to their tracks at that same place. Now, as the coal was consigned through to destination and routed for delivery via the Ulster and Delaware railroad, it seems to the writer as though no switching charge could consistently be made, and that such charge when it was made was a violation of traffic laws and rules, although just how this would apply I am unable to state \* \* \* ." A copy of the complaint was sent to the company, which answered, " \* \* \* That the coal referred to was not shipped under any through tariff from any point in Pennsylvania to destination on the Ulster and Delaware railroad, as this company has no through tariffs in connection with the West Shore railroad, and consequently the switching charge referred to was not a part of any through rate. The switching charge of \$10 per car applies on all anthracite coal switched from the tracks of the West Shore railroad to the tracks of this company at Kingston, N. Y. \* \* \* ." A copy of this answer was sent to complainants, who replied. The case was closed. (Case No. 3441.)

## LXXII.

IN THE MATTER OF COMPLAINTS AGAINST THE RUTLAND RAILROAD COMPANY AS TO CONDITION OF FENCES AND AS TO FARM CROSSINGS ALONG COMPLAINANTS' LANDS.

November 10, 1905.

During 1905 a number of complaints were received from farmers along the line of the Rutland Railroad Company (Chatham and Lebanon Valley division) as to lack of fences of said company along complainants' lands, and in some instances as to lack of farm crossings. At the time of writing this report most of these complaints are closed, the fences, and in some instances farm crossings, having been constructed,—the names of complainants (where the complainants are closed), being as follows: James I. Dunham of Old Chatham; Edwin M. Dorland of Old Chatham (see p. 91, 1903 report of this Board); Bert Bradley of Old Chatham; D. H. Angell of Old Chatham; F. E. Rosenburg of North Petersburg; W. R. Jenks of Old Chatham; C. N. Pease and others of Stephentown; S. H. Richmond of New Lebanon Center; William H. Allen of East Nassau; H. W. Wright and C. W. Spencer of New Lebanon. (Cases Nos. 3346, 2914, 3362, 3351, 3408, 3383, 3397, 3412, 3420, 3421.)

## Stations and Station Buildings.

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### I.

IN THE MATTER OF THE COMPLAINT OF J. J. ELLIS OF AVOCA AGAINST THE  
ERIE RAILROAD COMPANY AS TO STATION.

January 3, 1905.

This complaint, by J. J. Ellis of Avoca, against the Erie Railroad Company, was filed with this Board on November 29, 1904. It alleged that the station of said company at Avoca was not heated. Correspondence with the company resulted in the station being heated. The case was closed. (Case No. 3258.)

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### II.

IN THE MATTER OF THE COMPLAINT OF ANNA M. RAULE AGAINST THE NEW  
YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AS TO LACK OF  
PASSENGER STATION AT SHERMAN PARK.

January 3, 1905.

This complaint, by Anna M. Raule against the New York Central and Hudson River Railroad Company, was filed with this Board on January 12, 1904. It alleged that there should be a regular passenger station at Sherman Park, Westchester county, on the Harlem division of said company's railroad. This case was closed. In the matter of another similar complaint (residents of Sherman Park) now pending before this Board, the company has informed this Board that, " \* \* \* We have arranged to proceed with the erection of a passenger station suitable to the needs at that point \* \* \* ." (Case No. 3062.)

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### III.

IN THE MATTER OF THE COMPLAINT OF JOHN G. CLARK OF STAPLETON AS TO  
THE CLIFTON STATION OF THE STATEN ISLAND RAPID TRANSIT RAILWAY  
COMPANY.

February 8, 1905.

This complaint, by John G. Clark, of Stapleton, against the Staten Island Rapid Transit Railway Company was filed with this Board on December 27, 1904. It alleged that said company at Clifton, " \* \* \* has erected a new waiting room about 200 feet distant from the location of the room now in use, and contemplates using that alone in the near future, for the benefit and comfort of its passengers \* \* \* ." A report in the matter was made by the electrical expert of this Board and complainant was informed that in the opinion of this Board the change in location of this station did not come within the provisions of section 34 of the Railroad Law requiring the consent of this Board to the discontinuance of a station. The case was closed. (Case No. 3276.)

## IV.

IN THE MATTER OF THE COMPLAINT OF THE BOARD OF TRADE OF AVON AGAINST THE PENNSYLVANIA RAILROAD COMPANY AS TO THE NAME OF ITS STATION CALLED AVON.

March 9, 1905.

This complaint, by the Board of Trade of Avon, against the Pennsylvania Railroad Company (W. N. Y. & P. railroad), was filed with this Board December 3, 1904. It alleged that, " \* \* \* The W. N. Y. and P. R. R. Co. have a station on their time card and in their advertisements which they call Avon, it is misleading to the public and very annoying to the business men of Avon, N. Y., for the reason that the said road does not touch within two miles of Avon proper and their Avon station is nothing but a crossing and in the town of Caledonia, N. Y. Freight coming over said road is dumped off at said crossing without any protection and we, the business men of Avon, must hire a dray to go for said freight, and frequently our freight is damaged or lost. If this matter is proper to come before your board, I wish you would take it up and see if the said road can't be compelled to change the name of its station. \* \* \* " A copy of the complaint was sent to the company which answered that, " \* \* \* You will no doubt appreciate the fact that it would not only be a matter of confusion on the part of residents in the vicinity who are transacting business and have done so in the past, but also in handling the business from a railroad standpoint, to change the name of a long established station. There should be very little, if any, difficulty experienced if all parties concerned were to specify in their orders for the delivery of freight, what railroad delivery is desired \* \* \* "

A copy of this answer was sent to the complainants who replied. After consideration of the matter this Board informed complainants that it did not feel justified in recommending to the company that it change the name of its Avon station and the case was closed. (Case No. 3261.)

## V.

IN THE MATTER OF THE APPLICATION OF THE LONG ISLAND RAILROAD COMPANY, UNDER SECTION 34 OF THE RAILROAD LAW, FOR CONSENT TO THE DISCONTINUANCE OF ITS BEACH CHANNEL STATION ON ITS ROCKAWAY BEACH DIVISION.

Determination. May 31, 1905.

This application, by the Long Island Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of its Beach Channel station on its Rockaway Beach division, was filed with this Board on March 13, 1905. The station in question is located between Broad Channel and Hammel on the trestle across Jamaica Bay. A report as to the locality was made by an inspector of the Board to the effect that there exists but one small building which is owned by the railroad company and is unoccupied; that apparently there is no reason why a station should be maintained here. It does not appear to the Board that a public hearing in this case is necessary. After consideration of the matter, this Board believes that the application should be granted. The application is, therefore, granted, and this Board hereby consents, under section 34 of the Railroad Law, to the discontinuance of the Beach Channel station of the Long Island Railroad Company, on its Rockaway Beach division, between Broad Channel and Hammel on the trestle across Jamaica Bay. This station has been discontinued. (Case No. 3307.)

## VI.

IN THE MATTER OF THE COMPLAINT OF JOHN GAUL AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION).

July 6, 1905.

This complaint, by John Gaul, of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division) was filed with this Board on May 31, 1905. It alleged that certain local northbound trains on the Third Avenue elevated line had not stopped at the Forty-seventh and Fifty-third street stations. A copy of the complaint was sent to the company which answered that, " \* \* \* I have to say that, from May 29 to June 1, inclusive, out of a total of 2,200 trains scheduled to stop at these stations, 39 trains skipped Forty-Seventh street and 35 skipped Fifty-third street. In each case it was necessary to do this in order to maintain our schedule and avoid congestion, resulting, of course, in an accommodation to the largest number \* \* \* ."

A copy of this answer was sent to complainant. No reply was received and the case was closed. (Case No. 3353.)

## VII.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, UNDER SECTION 34 OF THE RAILROAD LAW, FOR CONSENT TO THE DISCONTINUANCE OF ITS STATION AT CRANES VILLAGE IN THE COUNTY OF MONTGOMERY.

Determination. August 14, 1905.

This application, by the New York Central and Hudson River Railroad Company, was filed with this Board on June 12, 1905. It asks consent of the Board to the discontinuance of its station at Cranes Village, Montgomery county, 3.27 miles east of the city of Amsterdam. A public hearing in the matter was held by this Board in the city of Albany on August 14, 1905, after public notice. George H. Walker appeared for the applicant; Frank L. Hagaman, supervisor of the town, appeared in person and presented a petition in opposition. After hearing evidence and arguments the hearing was closed. There is no freight station or siding for freight cars at this station. It appears that the Fonda, Johnstown and Gloversville Railroad Company operates an electric railroad between Amsterdam and Gloversville, passing through Cranes Village, such operation having begun in 1903; that there is frequent car service to and from Cranes Village on the electric railroad; that since the electric railroad has been in operation the travel on the steam railroad to and from Cranes Village has fallen off so that during 1905 there were but thirteen tickets sold at the station sought to be discontinued in January, seven in February, eight in March, twenty in April, four in May, twenty-eight in June, twenty in July and eleven from the 1st to the 12th of August. There was filed with the Board by the applicant a statement of the number of tickets sold during 1903 and 1904, as well as during the months named in 1905, which it is not deemed necessary to set forth in this determination. The opposition of the petitioners above referred to is in part as the discontinuance of facilities for handling of baggage if trains cease stopping at this station. After consideration of this matter, this Board believes that the application should be granted. It is evident that the electric railroad carries practically all the passengers to and from this station. This Board has considered the objection raised by the petitioners to the discontinuance of the handling of baggage on the steam trains at this point, and does not consider that it outweighs the fact that so few persons, as shown above, use the steam trains. The application is, therefore, granted, and this Board hereby consents, under section

34 of the Railroad Law, to the discontinuance of the Cranes Village station of the New York Central and Hudson River Railroad Company in the county of Montgomery.

This station has been discontinued. (Case No. 3357.)

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#### VIII.

IN THE MATTER OF THE COMPLAINT OF WILLIAM H. PRICE AGAINST THE BROOKLYN HEIGHTS RAILROAD COMPANY AS TO STATION ON ITS BRIGHTON BEACH LINE.

October 10, 1905.

This complaint, by William H. Price, of Brooklyn, New York city, against the Brooklyn Heights Railroad Company was filed with this Board on August 22, 1905. It protested against the alleged proposed intention of the company to remove the station on its Brighton Beach line, Brooklyn, from Avenue C to Avenue D. A copy of this complaint was sent to the company which answered that, " \* \* \* We have made no change in the stations on the Brighton Beach line, either at Avenue C or any other point, and have no change under consideration at the present time \* \* \* ."

A copy of the answer was sent to complainant and the case closed. (Case No. 3407.)

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#### IX.

IN THE MATTER OF THE COMPLAINT OF JOHN B. ROSE AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AS TO THE ROSETON PASSENGER STATION ON THE WEST SHORE RAILROAD, LESSOR.

November 10, 1905.

This complaint, by John B. Rose, of Roseton, against the New York Central and Hudson River Railroad Company, was filed with this Board on April 9, 1903. It alleged that the passenger station at Roseton on the river division of the West Shore railroad was in poor condition. After correspondence with the company and complainant and the matter seeming to resolve itself into a question of the price of land needed for a new station, the case was closed. (Case No. 2890.)

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#### X.

IN THE MATTER OF THE COMPLAINT OF RESIDENTS OF ATLANTA AGAINST THE ERIE RAILROAD COMPANY AS TO STATION.

November 10, 1905.

This complaint by residents of Atlanta against the Erie Railroad Company was filed with this Board on September 20, 1904. It alleged that the company's station at Atlanta had burned and had not been replaced. A new station has been built. The case was closed. (Case No. 3219.)

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#### XI.

IN THE MATTER OF THE COMPLAINT OF JOSEPH BEIHILF AGAINST THE INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY DIVISION). AS TO BUILDING STATION.

November 10, 1905.

This complaint, by Joseph Beihlf, of New York city, against the Interborough Rapid Transit Company (Manhattan Railway division), was filed

with this Board on October 20, 1904. It alleged that the company was not taking steps to obey chapter 636 of the Laws of 1905, requiring the construction of an elevated railroad station at the corner of One Hundred and Thirtieth street and Eighth avenue, New York city. A copy of the complaint was sent to the company which answered that,

"\* \* \* I beg to advise that we have taken steps, and our agents have endeavored to secure consents for the erection of this station. We did this long before Mr. Beihliff introduced his bill in the Legislature. There are certain parties owning property at that point whose consents are necessary, and who have been advised by their attorneys to accept no proposition from us as it might jeopardize other claims which they have against the company. We are at this very time making an effort to secure from these parties their consents. We have stood ready for the past two years to erect a station at One Hundred and Thirtieth street, provided the necessary consents can be had. Our experience has been that time is saved by securing these without recourse to condemnation proceedings, which, when resisted, occupy a long period of time. Should we be successful in getting the consents we will make no delay in our plans for the erection of this station. \* \* \*" A copy of this answer was sent to complainant and the case was closed. (Case No. 3439.)

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## XII.

IN THE MATTER OF THE APPLICATION OF THE LONG ISLAND RAILROAD COMPANY, UNDER SECTION 34 OF THE RAILROAD LAW, FOR CONSENT TO THE DISCONTINUANCE OF THE BEDFORD STATION ON ITS RAILROAD ON ATLANTIC AVENUE, BROOKLYN, NEW YORK CITY.

Determination. November 16, 1905.

This application, by the Long Island Railroad Company, under section 34 of the Railroad Law, was filed with this Board on November 9, 1905. It asks the consent of this Board to the discontinuance of the Bedford station (located at Franklin and Atlantic avenues, borough of Brooklyn, New York city) on its railroad on Atlantic avenue, a new station having been established on said railroad between New York and Nostrand avenues. A public hearing in the matter was given by this Board in the city of New York on November 16. J. F. Kearny appeared for the applicant; no one else appeared. The reason for the discontinuance of the Bedford station is because of the change of the grade of the railroad under what is known as the Atlantic avenue improvement.

This application is hereby granted, and this Board hereby consents, under section 34 of the Railroad Law, to the discontinuance of the Bedford station (located at Franklin and Atlantic avenues, borough of Brooklyn, New York city) on the railroad on Atlantic avenue, Brooklyn, New York city, of the Long Island Railroad Company.

This station is closed. (Case No. 3449.)

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## XIII.

IN THE MATTER OF THE LONG ISLAND RAILROAD COMPANY, UNDER SECTION 34 OF THE RAILROAD LAW, FOR CONSENT TO THE DISCONTINUANCE OF ITS STATION AT HEWLETT.

November 16, 1905.

On page 97, 1st vol. report of this Board for 1904, will be found a determination of this Board consenting to change of location of the station of the Long Island Railroad Company at Hewlett. At the time of writing this report this change has not been made. (Case No. 2584.)



## CROSSINGS.

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Under this and the succeeding title will be found all matters relating to railroad crossings, except accidents at crossings and inspections. See the title, "The Grade Crossing Law," in the Board's report at the beginning of this volume.

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### I.

IN THE MATTER OF THE APPLICATION OF THE ONEIDA RAILWAY COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, AS TO ITS DOUBLE TRACK ELECTRIC RAILWAY CROSSING THE WEST SHORE RAILROAD (STEAM—LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY), ON LENOX AVENUE (OTHERWISE CALLED THE CLOCKVILLE ROAD), IN THE CITY OF ONEIDA.

December 19, 1904.

The determination in this matter will be found at page 155, first volume, report of this Board for 1903. At the time of writing this report the tracks of the electric railway have not been constructed in this undercrossing. (Case No. 2782.)

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### II.

IN THE MATTER OF THE APPLICATION OF THE TOWN OF FINE, ST. LAWRENCE COUNTY, UNDER SECTION 61 OF THE RAILROAD LAW, AS TO A HIGHWAY IN SAID TOWN CROSSING THE CARTHAGE AND ADIRONDACK RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY).

Determination. December 21, 1904.

This application, by the town of Fine, St. Lawrence county, under section 61 of the Railroad Law, was filed with this Board on September 19, 1904. The petition asks the Board to determine whether a highway in said town shall cross the Carthage and Adirondack railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at or near Coffins mills, above, below or at the grade of said railroad. A public hearing, after notice as required by the statute, was given by this Board in the city of Albany on November 2, 1904. W. B. Van Allen appeared for the applicant; W. P. Rudd appeared for the New York Central and Hudson River Railroad Company. After hearing evidence the matter was held open pending a notification by the company to the attorney for the town of whether or not the company would oppose the determination by this Board that the crossing may be made at grade. No further hearing in the matter was held. The attorney for the town notified this Board that the attorney for the company had informed him that "The company does not desire to consent to the grade crossing at that point, but will offer no objections before the State Board of Railroad Commissioners under the application now pending." A copy of a letter of the attorney for the town to this effect was sent by this Board to the attorney for the company and this Board

received no contradiction of the statement above quoted. A crossing at grade at the point in question (although not a regularly laid out crossing) has existed for some years.

After consideration of the evidence in this matter, this Board deems that it would be justified in determining that this crossing may be made at grade. This Board, therefore, hereby determines under section 61 of the Railroad Law that the crossing by a highway of the Carthage and Adirondack Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at or near Coffins mills in the town of Fine, St. Lawrence county, shall be at the grade of said railroad. (Grade Crossing Case No. 508.)

This crossing has been constructed.

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### III.

IN THE MATTER OF THE PETITION OF THE BOSTON AND ALBANY RAILROAD COMPANY (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY), UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CADY'S GRADE CROSSINGS OF ITS RAILROAD IN THE TOWN OF CHATHAM, COLUMBIA COUNTY.

Modified Determination. December 21, 1904.

An order having been made on the 19th day of July, 1904, by the Board of Railroad Commissioners of the State of New York upon the petition of the Boston and Albany Railroad Company (leased to and operated by the New York Central and Hudson River Railroad Company), under section 62 of the Railroad Law as to the grade crossings of its railroad in the town of Chatham, Columbia county, known as Cady's crossings, ordering and directing that the same should be discontinued and an underground crossing substituted therefor as shown on the map attached to and made a part of said order of July 19, 1904, and in the manner in said order more fully set forth, and the said Boston and Albany Railroad Company (leased to and operated by the New York Central and Hudson River Railroad Company) desiring and requesting that said order of July 19, 1904, be amended to conform to the map hereto attached, and the description hereinafter contained, and for this purpose the petitioner, the Boston and Albany Railroad Company (leased to and operated by the New York Central and Hudson River Railroad Company) appearing by A. B. Gardener its attorney, the town of Chatham by John J. Wilbor, its supervisor, not appearing but consenting thereto, and the admission and proof of service of notice of this application on Norman Cady and proof of service on Zimri Palmer, the only owners affected by this application, neither of them appearing, and after hearing all parties interested who have appeared on this application, and after due deliberation it is,

Ordered, That the said order of July 19, 1904, be and the same is hereby amended to read as follows:

That the crossing at grade of the main road between East Chatham and Chatham Centre in the Town of Chatham and the railroad of said company located about five thousand two hundred and eighty-five (5,285) feet southwesterly from the East Chatham passenger station on said railroad shall be closed and discontinued and the travel thereon shall be diverted to another crossing not at grade to be constructed so that said highway shall pass under the said railroad by a bridge about fifty (50) feet southwesterly from said existing crossing.

That the crossing at grade of the cross-road leading to Old Chatham from said main road between East Chatham and Chatham Centre and the railroad of said company located about five thousand and seventy-one (5,071) feet southwesterly from said East Chatham passenger station, shall be closed and discontinued and the travel thereon shall be diverted to the new crossing aforesaid by a new way to be constructed on the northwesterly side of said railroad connecting said cross-road with said main road; and we prescribe the manner and limits within which such alterations shall be made as follows:

The location of said main road shall be changed as follows:

Beginning at an iron bolt set in the ground distant eighty-five and seven-tenths (85.7) feet southeasterly from the southeasterly corner of the dwelling-house belonging to Zimri Palmer, and thirty-seven and eight-tenth (37.8) feet northeasterly from the northwesterly corner of the barn belonging to said Zimri Palmer and located on the southerly side of said main road, the centre line of the new location of said main road shall run south 87° west two hundred and sixty-two (262) feet to a point in the southeasterly side line of the location of the Boston and Albany railroad; thence running north 89° west across said location eighty-eight and forty-three one hundredths (88.43) feet; thence running north 79° 37' 30" west three hundred and thirty-two and eighty-eight one-hundredths (332.88) feet to a point in the southeasterly line of the cross-road leading to Chatham from said main road between East Chatham and Chatham Centre distant one hundred and fifty-six and ten one-hundredths (156.10) feet southwesterly from the southwesterly corner of the dwelling-house of Norman Cady.

The following parcels of land are hereby taken for the new location of said highway:

*Parcel No. 1 from Zimri Palmer.*

Beginning at the intersection of the southwesterly line of said main road between East Chatham and Chatham Centre with the dividing-line between land of said Zimri Palmer and land of said Norman Cady; thence running southwesterly by said dividing-line thirty-four (34) feet to a stone monument set in the ground; thence running north 81° east one hundred and twelve and eighty-one one-hundredths (112.81) feet to a stone monument set in the ground on the said southwesterly line of said main road distant thirty-two (32) feet westerly from the said northwesterly corner of said barn belonging to said Palmer; thence running westerly by the said southwesterly line of said main road about one hundred and ten (110) feet to the place of beginning.

*Parcel No. 2 from Norman Cady.*

Beginning at the intersection of the said southwesterly line of said main road between East Chatham and Chatham Centre with the said dividing-line between land of said Palmer and land of said Cady; thence running southwesterly by said dividing-line thirty-four (34) feet to a stone monument set in the ground; thence running north 89° 40' west one hundred and eleven and seventeen one-hundredths (111.17) feet to a stone monument set in the ground on the said southeasterly side line of the location of the Boston and Albany railroad; thence running northeasterly by the said southeasterly side line of said railroad location fifty-two (52) feet to the said southwesterly line of said main road; thence running easterly by the said southwesterly line of said main road about ninety-three (93) feet to the place of beginning.

*Parcel No. 3 from Norman Cady.*

Beginning at the intersection of the northwesterly side line of the location of the Boston and Albany railroad with the southwesterly line of said main road between East Chatham and Chatham Centre; thence running southwesterly by the said northwesterly side line of said railroad location sixty-seven and four-tenths (67.4) feet to a stone monument set in the ground; thence running north 69° 36' west ninety (90) feet to a stone monument set in the ground; thence running north 81° 36' west two hundred and forty-five and six-tenths (245.6) feet to a stone monument set in the ground on the southeasterly line of said cross-road leading to Chatham from said main road between East Chatham and Chatham Centre; thence running northeasterly by the said southeasterly line of said cross-road forty-five and eighty-three one-hundredths (45.83) feet; thence running north 88°

52' east thirty-six and eighty-five one-hundredths (36.85) feet; thence running south  $81^{\circ} 36'$  east one hundred and ninety-three and thirty-four one-hundredths (193.34) feet; thence running north  $82^{\circ} 42'$  east forty-one and fifty one-hundredths (41.50) feet to the said southwesterly line of said main road between East Chatham and Chatham Centre; thence running south-easterly by the said southwesterly line of said main road about sixty-seven (67) feet to the place of beginning.

The location of said cross-road leading to Old Chatham from said main road between East Chatham and Chatham Centre shall be changed as follows:

Beginning at a point in the southwesterly line of said cross-road distant ninety-five (95) feet northwesterly from the centre line of the location of the Boston and Albany railroad, the centre line of the new location of said cross-road shall run south  $22^{\circ} 15'$  west three hundred and twenty-eight and seventy-two one-hundredths (328.72) feet to a point in the centre line of the new location of said main road between East Chatham and Chatham Centre distant twenty-six and fifty-six one-hundredths (26.56) feet westerly from the northwesterly side line of the said railroad location.

The following parcel of land belonging to said Norman Cady is hereby taken for the new location of said cross-road:

Beginning at a point on the southwesterly line of said cross-road distant twenty-six (26) feet northwesterly from the centre line of the new location of said cross-road; thence running southeasterly by the said southwesterly line of said cross-road fifty-one (51) feet; thence running south  $22^{\circ} 20'$  west one hundred and twenty-four and ninety-three one-hundredths (124.93) feet to a point distant twenty (20) feet southeasterly from the said centre line of said new location of said cross-road; thence running south  $19^{\circ} 45'$  west ninety-eight and thirty-four one-hundredths (98.34) feet to the north-easterly line of said main road between East Chatham and Chatham Centre; thence running northwesterly by the said northeasterly line of said main road sixty (60) feet; thence running north  $32^{\circ} 10'$  east one hundred and twelve and thirty-two one-hundredths (112.32) feet to a point distant fifteen (15) feet northwesterly from the said centre line of said new location of said cross-road; thence running north  $20^{\circ} 28'$  east one hundred and fifty-six and thirty-eight one-hundredths (156.38) feet to the place of beginning.

The said main road between East Chatham and Chatham Centre as altered shall pass under the tracks of said Boston and Albany railroad.

A suitable bridge shall be built over said main road as altered to support the tracks of said railroad with a clear headroom of not less than thirteen (13) feet between the grade of the highway and the underside of said bridge.

We specify the grades for said main road as altered and for said cross-road as altered, and the general method of construction as follows:

From a point in said main road as altered distant thirty-five (35) feet westerly from the centre line of the location of said railroad measured on the centre line of said main road as altered, the grade shall be level eastward until said level grade intersects the present grade of said main road, and from the said point distant thirty-five (35) feet westerly from the centre line of the location of the railroad the grade shall rise westwardly at a rate of eight and five-tenths (8.5) feet in one hundred feet to the present grade of said cross-road leading to Chatham from said main road between East Chatham and Chatham Centre.

The grade of said cross-road leading to Old Chatham as altered shall descend from its present grade southwesterly at a rate of five and two hundred and seventeen one-thousandths (5.217) feet in one hundred feet for a distance of one hundred and sixty-six (166) feet, thence the grade shall descend at a rate of eight (8) feet in one hundred feet to its junction with said main road between East Chatham and Chatham Centre as altered.

Said main road as altered and said cross-road leading to Old Chatham as altered shall be graded to a width of twenty (20) feet.

The surface of the roadways is to be of good gravel ten (10) inches in depth with the proper crowning in the middle.

Three iron pipe culverts shall be built under and across said main road as altered located as follows: One, thirty (30) inches in diameter, at a point

about seventy-six (76) feet easterly from the said cross-road leading to Chatham from said main road between East Chatham and Chatham Centre; one, sixteen (16) inches in diameter, at a point near the junction of said main road as altered with the said cross-road as altered leading to Old Chatham from said main road; and one, twenty (20) inches in diameter, at a point about one hundred and seventy (170) feet easterly from the southeasterly line of the railroad location.

A drain-pipe twenty-four (24) inches in diameter shall be laid from the southerly end of said last described iron pipe culvert eastwardly on the southerly side of said main road for a distance of one hundred and forty (140) feet as shown upon the plan hereinafter described:

Wherever the grade of said main road as altered or of said cross-road as altered leading to Old Chatham exceeds five (5) feet in one hundred feet; gutters three (3) feet wide shall be provided upon each side thereof constructed of cobble paving stones.

At the junction of the said cross-road leading to Chatham with the said main road between East Chatham and Chatham Centre the necessary grading shall be done to make proper and convenient connections between said main road in its present location and said main road as altered.

Suitable pipe culverts shall be provided under the roadways at said junction as shown upon the plan hereinafter described.

The bridge over said main road as altered shall have a clear span of not less than twenty (20) feet measured at right angles with the centre line of said main road. It shall be built of steel with a tight floor composed of two layers of boards one inch in thickness so laid as to break joints.

Said bridge shall be supported on abutments of quarry face ashler masonry with suitable jacking, or of Portland cement concrete.

Suitable fences not less than three (3) feet six (6) inches high shall be built upon both sides of said main road as altered and of said cross-road as altered leading from said main road to Old Chatham.

Substantial wooden railings not less than three (3) feet six (6) inches high shall be built upon both sides of the roadways of said main road as altered and of said cross-road as altered so far as said roadways are in embankment.

We decide and specify that so much of said main road between East Chatham and Chatham Centre as at present laid out as lies within the location of the Boston and Albany railroad and so much of said cross-road leading from said main road to Old Chatham as at present laid out as lies within the location of the Boston and Albany railroad shall be discontinued upon the completion of the alterations herein ordered.

We file herewith as a part of our decision showing the alterations herein decided upon a plan entitled "Plan and Profiles for the Separation of Grades at Cady's Crossings, Chatham, New York," dated August 25, 1904, and signed by us. (Grade Crossing Case No. 494.)

See p. 135, 1st vol. 1904 report of this Board. At the time of writing this report detail plans, specifications and proposals of contractors for this work have not yet been submitted to this Board for approval although it is intended that they shall be in the near future and the work be begun in the spring.

#### IV.

IN THE MATTER OF THE APPLICATION OF THE PITTSBURG, SHAWMUT AND NORTHERN RAILROAD COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILROAD SHALL CROSS STREETS AND HIGHWAYS IN CATTARAUGUS AND ALLEGANY COUNTIES.

Determination. January 3, 1905.

This application, by The Pittsburg, Shawmut and Northern Railroad Company, under section 60 of the Railroad Law, was filed with this Board on

August 10, 1904. The applicant asks the Board to determine the manner in which its single track railway shall cross the following streets and highways in Cattaraugus and Allegany counties, to wit:

*Cattaraugus County—Town of Portville.*

1. The highway known as the Portville-Bolivar highway,—near premises formerly owned by Alma Coats.

*Allegany County—Town of Genesee.*

2. The highway known as the Wilson Brook road,—at Bowler's station.
3. The highway known as the Slater-Brook road,—at or near premises owned by Charles W. Fairbank.
4. The highway known as the Windfall Brook road,—leading from Little Genesee.
5. The highway leading from the Portville-Bolivar highway to the Windfall Brook highway,—at a point known as Hall's crossing.

*Village of Bolivar.*

6. The highway known as Pleasant street.
7. The highway known as the Merritt Hollow or Salt Rising road.
8. The highway known as Main street.

*Village of Richburg.*

9. The highway situated at a point about 250 feet southerly from the next highway mentioned herein.
10. The highway known as the Richburg Hill road,—at the depot of the applicant in Richburg.

*Town of Wirt.*

11. The highway known as the Hell Hollow highway.
12. The highway known as the East Notch highway.
13. The highway leading easterly from the main Friendship-Bolivar-West Notch highway and sometimes called the Benjamin Worth road.
14. The highway known as the Calvin Wheeler road,—at the Wirt Center station of the applicant.
15. The highway extending from the West Notch road to premises known as the Wyant lands.
16. The highway known as the Voorhees road.
17. The highway known as the West Notch highway,—on premises owned by W. W. Potter.
18. The highway known as the Mulkin road.
19. The highway sometimes called the Hicks road,—at or near the Snyder premises.
20. The highway leading from the hamlet of Nile to Clarksville.

*Town of Friendship.*

21. The highway known as the North Branch road,—at or near premises formerly owned by Renwick.
22. The highway known as the White road,—near premises now or formerly owned by Gardner.
23. The highway known as the McCarthy road.
24. The highway known as the Higgin's Mill road.
25. The highway known as the Hess road.
26. The highway known as the Transit road.
27. The highway known as the Old Plank road.

Public hearings in the matter were held by this Board in Niagara Falls on August 25, 1904, and before Commissioner Baker (by delegation of the Board) in Bolivar on November 29, 1904. Frank Sullivan Smith, W. T. Bliss and James T. Ward appeared for the applicant; E. M. Worth and DeMerville Page appeared for the village in opposition to crossing at grade at Main street in the village of Bolivar; A. L. Elliott appeared for the town of Wirt in relation to the Hell Hollow road crossing (No. 11), the Voorhees road crossing (No. 16), the West Notch road crossing (No. 17) and the Richburg Hill road crossing (No. 10). The evidence was closed at the hearing on November 29. At the hearing on November 29 Mr. Elliott did not appear nor was there any other appearance on behalf of the town of Wirt, and it was announced by counsel for the applicant that it was their understanding that there is no opposition on the part of said town to the granting of the application.

The crossings in question are constructed, this portion of the railroad being a relocated line. It was supposed by the company and by this Board that section 60 did not apply to a relocated line. However, the courts have otherwise decided, and this application was made here. The crossing as to which contention exists is the Main street crossing in Bolivar, the village desiring that this crossing be made an undercrossing. It is now a grade crossing.

From the evidence the Board does not believe that it is practicable to carry Main street under the railroad in a proper undercrossing, because of the impossibility of draining such undercrossing. We are convinced that were an undercrossing with a clear headroom of 14 feet constructed, it would be found impossible to so drain it that it could be used with reasonable freedom by the public. Were the headroom to be less than 14 feet, very serious drainage difficulties would still be encountered and the lower headroom would interfere seriously with traffic on the street, which traffic is peculiar to an oil country, and includes oil-well appliances such as tanks, bullwheels and auger stems, which when loaded upon wagons cannot pass through an opening underneath the track, sufficiently shallow to admit of drainage. This is borne out by the action of the board of trustees of the village of Bolivar in requiring an opening having a vertical clearance of 15 feet and a width of 30 feet. To raise the railroad to obtain sufficient headroom and escape drainage difficulties would increase the controlling grade to an extent which would greatly reduce the loads which could be hauled over the railroad at this point. There is a good view at the existing crossing for a distance on both highway and railroad in both directions, from one-quarter to half a mile. The number of trains run is not large. Upon the hearing no proof whatever was offered to show that any accident has occurred upon the crossing although the same has been in operation for upward of two years, nor that any accident has been narrowly averted. The testimony of all witnesses produced upon the hearing was to the effect that the crossing is as free from cause of criticism as any grade crossing can be.

After consideration of the evidence this Board hereby determines, under section 60 of the Railroad Law, that it would be impracticable for the single track railroad of The Pittsburg, Shawmut and Northern Railroad Company to cross otherwise than at grade the streets and highways in Cattaraugus and Allegany counties hereinafter named except where a method of crossing otherwise than at grade is hereinafter named and in such cases this Board hereby determines that said crossings by said single track railroad shall be over or under the street or highway as hereinafter set forth:

*Cattaraugus County—Town of Portville.*

1. At grade the highway known as the Portville-Bolivar highway,—near premises formerly owned by Alma Coats.

*Allegany County—Town of Genesee.*

2. At grade the highway known as the Wilson Brook road,—at Bowler's station.

3. At grade the highway known as the Slater-Brook road,—at or near premises owned by Charles W. Fairbank.

4. At grade the highway known as the Windfall Brook road,—leading from Little Genesee.

5. At grade the highway leading from the Portville-Bolivar highway to the Windfall Brook highway,—at a point known as Hall's crossing.

*Village of Bolivar.*

6. At grade the highway known as Pleasant street.

7. At grade the highway known as the Merritt Hollow or Salt Rising road.

8. At grade the highway known as Main street.

*Village of Richburg.*

9. At grade the highway situated at a point about 250 feet southerly from the next highway mentioned herein.

10. At grade the highway known as the Richburg Hill road,—at the depot of the applicant in Richburg.

*Town of Wirt.*

11. Over the grade of the highway known as the Hell Hollow highway.

12. Over the grade of the highway known as the East Notch highway.

13. At grade the highway leading easterly from the main Friendship-Bolivar-West Notch highway and sometimes called the Benjamin Worth road.

14. At grade the highway known as the Calvin Wheeler road,—at the Wirt Center station of the applicant.

15. At grade the highway extending from the West Notch road to premises known as the Wyant lands.

16. Over the grade of the highway known as the Voorhees road.

17. Over the grade of the highway known as the West Notch highway,—on premises owned by W. W. Potter.

18. At grade the highway known as the Mulkin road.

19. At grade the highway sometimes called the Hicks road,—at or near the Snyder premises.

20. Over the grade of the highway leading from the hamlet of Nile to Clarksville.

*Town of Friendship.*

21. At grade the highway known as the North Branch road,—at or near premises formerly owned by Renwick.

22. At grade the highway known as the White road,—near premises now or formerly owned by Gardner.

23. At grade the highway known as the McCarthy road.

24. At grade the highway known as the Higgin's Mill road.

25. At grade the highway known as the Heas road.

26. Over the grade of the highway known as the Transit road.

27. At grade the highway known as the Old Plank road.

(Grade Crossing Case No. 502.)

As stated above, these crossings are constructed.

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V.

IN THE MATTER OF THE PETITION OF THE TOWN BOARD OF THE TOWN OF GEDDES,  
ONONDAGA COUNTY, UNDER SECTION 62 OF THE RAILROAD LAW.

Determination as to Division of Expense. January 12, 1905.

The New York Central and Hudson River Railroad Company, for itself and its lessor, the West Shore Railroad, and the Delaware, Lackawanna and



Western Railroad Company (Oswego and Syracuse Railroad, lessor), in pursuance of a determination of this Board in this matter, dated April 15, 1902, are to bear, under the statute, 50 per centum of the cost of the work under said determination.

This Board hereby determines, under section 65 of the Railroad Law, that the 50 per centum of the expense to be borne by the New York Central and Hudson River Railroad Company, for itself and its lessor, the West Shore Railroad, and by the Delaware, Lackawanna and Western Railroad Company (Oswego and Syracuse Railroad, lessor,) under a determination of this Board dated April 15, 1902, under section 62 of the Railroad Law, in the matter of this petition, shall be divided between and borne by the New York Central and Hudson River Railroad Company and the Delaware, Lackawanna and Western Railroad Company on the basis of length of right of way crossed of each company to total length of bridge.

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## VI.

Supplemental Determination as to Division of Expense. October 11, 1905.

On January 12, 1905, this Board determined, under section 65 of the Railroad Law, "That 50 per centum of the expense to be borne by the New York Central and Hudson River Railroad Company, for itself and its lessor, the West Shore Railroad, and by the Delaware, Lackawanna and Western Railroad Company (Oswego and Syracuse Railroad, lessor,) under a determination of this Board, dated April 15, 1902, under section 62 of the Railroad Law, in the matter of this petition, shall be divided between and borne by the New York Central and Hudson River Railroad Company and the Delaware, Lackawanna and Western Railroad Company on the basis of length of right of way crossed of each company to total length of bridge."

Subsequently the Delaware, Lackawanna and Western Railroad Company asked for a hearing as to this division of expense notwithstanding that before the determination thereof this Board had received the following letter from the chief engineer of said company:

"I received a recent communication from Mr. Fernstrom, Chief Engineer of the New York Central, in reference to putting in permanent construction at the end of Van Vleck Road viaduct, at Syracuse, and advise you that I have had the question of division of expense for the work up with our people, and will say that we will stand for our proportional cost of this work as well as the expense for the entire structure to be borne by this company and the New York Central on the basis of length of right of way crossed, and it will not be necessary, so far as we are concerned, to have a further hearing in the matter."

As requested, hearings were given by this Board on February 17, August 29 and September 22, 1905, at which both companies were represented, and evidence given as to the division of expense.

After consideration of this matter this Board does not believe that it should modify its said determination of January 12, 1905, as to division of the 50 per centum of the cost of said work between the New York Central and Hudson River Railroad Company and the Delaware, Lackawanna and Western Railroad Company and it hereby refuses to modify said determination. (Grade Crossing Case No. 174.)

See page 82, 1st vol., 1902, report of this Board.

## VII.

**MODIFIED DETERMINATION IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ALLEGANY.**

**Modified Determination. January 12, 1905.**

Under date of June 14, 1904, this Board determined, under section 60 of the Railroad Law, how the single track railway of the Buffalo and Susquehanna Railway Company should cross streets, avenues and highways in the county of Allegany. On December 21, 1904, there was filed with this Board a petition of the town board of the town of Caneadea, Allegany county (concurrent in by the Buffalo and Susquehanna Railway Company), asking that this Board modify its determination of June 14, 1904, so that the railway of the applicant shall cross at grade the highway in said town known as the Crawford Creek road instead of over the grade of said highway as set forth in said determination. A public hearing on said petition, after notice as required by the statute, was given by this Board in the city of Albany on January 4, 1905. Walter P. Cooke appeared for the company; no one appeared for the town. After hearing arguments the hearing was closed. Subsequently there was filed with the Board an affidavit of E. P. Lupfer, assistant chief engineer of the company, to which is attached a blue-print map, setting forth the conditions that would surround the crossing and its approaches if made at grade.

It appearing to this Board that the prayer of the petitioner should be granted this Board, under section 60 of the Railroad Law, hereby modifies its said determination of June 14, 1904, so far as the Crawford Creek road highway in said town of Caneadea, Allegany county, is concerned, and hereby determines, under section 60 of the Railroad Law, that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the said Crawford Creek road highway in said town of Caneadea, Allegany county, at grade instead of over the grade of said Crawford Creek road highway as determined in the determination of June 14, 1904. (Grade Crossing Case No. 479. See 1st vol., 1904, report of this Board, page 121.)

## VIII.

**MODIFIED DETERMINATION IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ALLEGANY.**

**Modified Determination. June 28, 1905.**

Under date of June 14, 1904, this Board determined, under section 60 of the Railroad Law, how the single track railway of the Buffalo and Susquehanna Railway Company should cross streets, avenues and highways in the county of Allegany. On April 11, 1905, there was filed with this Board a petition of the town board and highway commissioner of the town of Amity, Allegany county (concurrent in by the Buffalo and Susquehanna Railway Company), asking that this Board modify its determination of June 14, 1904, so that the Railway of the Buffalo and Susquehanna Railway Company shall cross above grade the highway in said town known as the Plank road instead of at the grade of said highway as set forth in said determination. The petition for modification also asks that a temporary overcrossing to carry the railway may be constructed. The petition also asks that the undercrossing for the highway shall have a width of 20 feet in the clear and that there shall be a clearance from the lowest part of the bridge to the highway of 12 feet. A pub-

lic hearing on said petition, after notice as required by the statute, was given by this Board in the city of Auburn on June 28, 1905. Walter P. Cooke appeared for the petitioners and for the company. No one else appeared. After hearing arguments the hearing was closed.

It appearing to the Board that the prayer of the petitioner should be granted, this Board, under section 60 of the Railroad Law, hereby modifies its said determination of June 14, 1904, so far as the Plank road highway in said town of Amity, Allegany county, is concerned, and hereby determines, under section 60 of the Railroad Law, that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the said Plank road highway in said town of Amity, Allegany county, over the grade of said highway instead of at the grade of said highway as determined in said determination of June 14, 1904. This Board also hereby determines, under section 60 of the Railroad Law, that the undercrossing for the highway shall have a width of 20 feet in the clear and a clearance from the lowest part of the bridge to the highway of 12 feet. This Board also hereby determines, under section 60 of the Railroad Law, that a temporary overcrossing to carry the railway may be constructed pending the construction of the permanent overcrossing to carry the railway; the temporary overcrossing to be maintained for a period not exceeding six months from March 22, 1905. (Grade Crossing Case No. 479. See 1st vol., 1904, report of the Board, page 121.)

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### IX.

IN THE MATTER OF THE APPLICATION OF THE ITHACA-CORTLAND TRACTION COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER ITS RAILROAD (SINGLE TRACK, STREET SURFACE, ELECTRIC,) SHOULD CROSS THE AUBURN BRANCH OF THE LEHIGH VALLEY RAILROAD (STEAM) AND THE LEHIGH VALLEY RAILROAD (STEAM) IN THE VILLAGE OF FREEVILLE (ONE CROSSING), THE POINTS OF CROSSING BEING NEAR TOGETHER, ABOVE, BELOW OR AT THE GRADE OF SAID STEAM RAILROADS, IT BEING PROPOSED THAT THE CROSSING SHALL BE ABOVE THE GRADE OF THE STEAM RAILROADS.

January 12, 1905.

This application was filed with this Board on April 7, 1904, and was withdrawn on January 12, 1905. See No. XXXI in this volume under this title. (Case No. 3130.)

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### X.

IN THE MATTER OF THE APPLICATION OF THE ITHACA-CORTLAND TRACTION COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER ITS RAILROAD (SINGLE TRACK, STREET SURFACE, ELECTRIC,) SHOULD CROSS THE LEHIGH VALLEY RAILROAD (STEAM) AT A POINT ON THE MAIN HIGHWAY BETWEEN THE VILLAGE OF DRYDEN AND A SETTLEMENT KNOWN AS McLEAN, ABOVE, BELOW OR AT THE GRADE OF SAID STEAM RAILROAD.

January 12, 1905.

This application was filed with this Board on April 7, 1904, and was withdrawn on January 12, 1905. See No. XXX in this volume under this title. (Case No. 3129.)

## XI.

IN THE MATTER OF THE APPLICATION OF THE ITHACA-CORTLAND TRACTION COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER ITS RAILROAD (SINGLE TRACK, STREET SURFACE, ELECTRIC,) SHOULD CROSS THE AUBURN BRANCH OF THE LEHIGH VALLEY RAILROAD (STEAM) AT A POINT ON THE MAIN HIGHWAY BETWEEN THE VILLAGE OF FREEVILLE AND A SETTLEMENT KNOWN AS WILLOW GLEN, ABOVE, BELOW OR AT THE GRADE OF SAID STEAM RAILROAD.

January 12, 1905.

This application was filed with this Board on April 7, 1904, and was withdrawn on January 12, 1905. See No. XXXI in this volume under this title, (Case No. 3128.)

## XII.

IN THE MATTER OF THE COMPLAINT OF THOMAS D. LEWIS AGAINST THE DELAWARE, LACKAWANNA RAILROAD COMPANY, AS TO CROSSING.

March 9, 1905.

This complaint, by Thomas D. Lewis of Fulton, against the Delaware, Lackawanna and Western Railroad Company, was filed with this Board on August 15, 1904. It asked that the company be compelled to plank and make a grade crossing of its railroad in Leitch street in Fulton, it being claimed that a lawful crossing at grade existed but that the company refused to plank it. The company claimed that a lawful crossing at grade did not exist, and that a proceeding under section 61 of the Railroad Law was necessary to establish a crossing at this point. No such proceeding was brought before this Board and the case was closed. (Case No. 3204.)

## XIII.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE ITHACA-CORTLAND TRACTION COMPANY (STREET SURFACE-ELECTRIC) AS TO CROSSING THE AUBURN BRANCH OF THE LEHIGH VALLEY RAILROAD COMPANY (LEHIGH AND NEW YORK RAILROAD, LESSOR—STEAM) IN THE VILLAGE OF DRYDEN.

Determination. March 23, 1905.

This application, under section 68 of the Railroad Law, by the Ithaca Cortland Traction Company (single track, street surface, electric), was filed with this Board on April 7, 1904. It asked this Board to determine whether the single track electric railroad of the applicant shall cross the Auburn branch of the Lehigh Valley Railroad Company (Lehigh and New York Railroad, lessor—steam) at or near the intersection of West Main street and Rochester street in the village of Dryden above, below or at the grade of said steam railroad. A public hearing in the matter was held by this Board in the city of Albany on January 12, 1905. George E. Monroe appeared for applicant; Diven & Diven and J. F. Schaperkottter appeared for the Lehigh Valley Railroad Company in opposition. At a meeting of this Board in Albany on February 15, 1905, H. D. Titus, superintendent of the division of the steam railroad in question, made statements as to protection by signals and derrails if the crossing is allowed to be at grade, and W. H. Lane, engineer for the Hall Signal Company, made statements for the electric railroad company as to derrails and signals if the crossing is to be at grade.

After consideration of the evidence we are of the opinion that we can properly determine that this crossing may be made at grade at this point. The engineer of the applicant testified that, "The view is unobstructed for

half a mile to a mile to the south and for 1,500 to 2,000 feet to the north;" the engineer of the Lehigh Valley Railroad Company testified that there was some obstruction to the view. We believe that with derailing switches in the electric railroad to be operated by conductors of cars a crossing at grade at this point would seem to be sufficiently protected in view of the number of trains operated on the steam railroad and the number of cars which will likely be operated on the electric railroad.

This Board, therefore, hereby determines, under section 68 of the Railroad Law, that the single track electric railroad of the Ithaca-Cortland Traction Company shall cross the Auburn branch of the Lehigh Valley Railroad Company (Lehigh and New York Railroad, lessor—steam), at or near the intersection of West Main street and Rochester street in the village of Dryden, at the grade of the steam railroad. This Board also hereby determines, under section 68 of the Railroad Law, that a derailing switch shall be constructed in the electric railroad on each side of said crossing, which derailing switches shall be operated by conductors of the electric cars approaching the crossing. This Board also hereby determines, under section 68 of the Railroad Law, that a V-shaped trough shall be constructed over the trolley wire of the electric railroad and connected therewith at this crossing, said trough to extend at least a full car length from the crossing in each direction. This Board also hereby determines, under section 68 of the Railroad Law, that before construction plans for said derailing switches and copper trough shall be submitted to this Board for approval. This Board also hereby determines, under section 68 of the Railroad Law, that the entire expense of the construction and maintenance of the necessary crossing frogs and copper trough and derailing switches in the electric railroad at this crossing shall be borne by the Ithaca-Cortland Traction Company or its successors. This Board also hereby determines, under section 68 of the Railroad Law, that the Ithaca-Cortland Traction Company or its successors shall pay the expense of and maintain any crossing frogs made necessary by the construction at grade in the future at this crossing of additional track or tracks by the Lehigh Valley Railroad Company or its successors, or by its lessor, the Lehigh and New York Railroad. This Board also hereby determines, under section 68 of the Railroad Law, that if additional track or tracks of the steam railroad are constructed at grade at said crossing in the future, the V-shaped copper trough shall be extended on the trolley wire of the electric railroad to cover said track or tracks and a distance of at least a full car length from the crossing in each direction, and that the derailing switches in the electric railway shall be rearranged if necessary to protect said additional track or tracks of the steam railroad, at the expense of the Ithaca-Cortland Traction Company or its successors. (Case No. 3127.)

This crossing has not been constructed.

#### XIV.

IN THE MATTER OF THE APPLICATION OF JOHN M. VAN GORDEN, HIGHWAY COMMISSIONER OF THE TOWN OF HORSEHEADS, CHEMUNG COUNTY, UNDER SECTION 61 OF THE RAILROAD LAW, AS TO FOURTEENTH STREET IN SAID TOWN CROSSING THE LEHIGH VALLEY RAILROAD.

Determination. March 30, 1905.

This application, by John M. Van Gorden, highway commissioner of the town of Horseheads, Chemung county, under section 61 of the Railroad Law, was filed with this Board on February 16, 1905. The petition asks the Board to determine whether a highway known as Fourteenth street in said town shall cross the Lehigh Valley railroad over, under or at the grade of said railroad. Attached to the petition are papers signed by the village of Elmira Heights, the United States Cut Flower Company (a

property owner), the W. R. Compton Realty and Building Company (a property owner), and the Lehigh Valley Railroad Company to the effect that the crossing should be made at grade. A public hearing, after notice as required by the statute, was given by Commissioner Dunn (by delegation of the Board) in the city of Elmira on March 28, 1905. William R. Compton appeared for the applicant; Seymour Lowman appeared for the W. R. Compton Realty and Building Company in favor of a crossing at grade; George McCann appeared for the village of Elmira Heights in favor of a crossing at grade; H. D. Titus appeared for the Lehigh Valley Railroad Company. After hearing evidence and arguments the hearing was closed.

After consideration of the evidence in this matter this Board deems that it would be justified in determining that this crossing may be made at grade. This Board, therefore, hereby determines, under section 61 of the Railroad Law, that the crossing by a highway known as Fourteenth street in the town of Horseheads, Chemung county, of the Lehigh Valley railroad shall be at the grade of the said railroad, the crossing to be properly planked and a railroad highway crossing sign to be constructed and maintained thereat.

An existing crossing of the railroad at grade used by the public will be closed when the crossing referred to in this determination is opened. (Grade Crossing Case No. 528.)

This crossing has been constructed and a highway crossing sign is maintained thereat, and the other crossing at grade referred to has been closed.

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#### XV.

IN THE MATTER OF A PETITION OF THE TOWN BOARD OF THE TOWN OF READING, SCHUYLER COUNTY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO CHANGING A GRADE CROSSING OF THE SYRACUSE, GENEVA AND CORNING RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) BY A HIGHWAY LEADING FROM THE VILLAGE OF READING CENTRE TO THE VILLAGE OF WATKINS, AT A POINT IN SAID TOWN KNOWN AS BIG HOLLOW, TO AN UNDERCROSSING.

March 30, 1905.

This petition was filed with this Board on October 28, 1904, and was withdrawn on March 30, 1905. (Grade Crossing Case No. 515.)

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#### XVI.

IN THE MATTER OF THE APPLICATION OF THE HIGHWAY COMMISSIONER OF THE TOWN OF UNION, BROOME COUNTY, UNDER SECTION 61 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER A NEW HIGHWAY IN SAID TOWN RUNNING NORTH FROM THE MAIN RIVER ROAD THROUGH LANDS OF THE ENDICOTT LAND COMPANY, TO BE KNOWN AS MCKINLEY AVENUE, SHALL CROSS THE ERIE RAILROAD OVER, UNDER OR AT THE GRADE OF SAID RAILROAD.

Determination. May 23, 1905.

This application, by the highway commissioner of the town of Union, Broome county, under section 61 of the Railroad Law, was filed with this Board on April 12, 1905. The petition asks the Board to determine whether a new highway in said town running north from the Main River road through lands of the Endicott Land Company to be known as McKinley avenue, shall cross the Erie railroad over, under or at the grade of said railroad. A public hearing in the matter, after notice as required by the statute, was held in the city of Elmira on May 16, 1905. E. C. Moody appeared for the applicant. No one else appeared. The hearing was adjourned until Monday, May 22, 1905, before Commissioner Dunn in Binghamton, at which time the adjourned

hearing was held, E. C. Moody appearing for the applicant. At this adjourned hearing there was filed with the Board a certified copy of an extract from an agreement between the Erie Railroad Company and the Endicott Land Company and the Endicott-Johnson Realty Company as to the carrying of McKinley avenue across the Erie railroad above grade. The hearing was closed on May 22.

This Board believes that the crossing should be made above the grade of the railroad. This Board, therefore, hereby determines, under section 61 of the Railroad Law, that a new highway in the town of Union, Broome county, running north from the Main River road through lands of the Endicott Land Company, to be known as McKinley avenue, shall cross the Erie railroad over the grade of said railroad; the height, length and material of the bridge or structure by means of which such avenue shall be carried across such railroad above grade, and the length, character and grades of the approaches thereto to be shown by the blue print plan attached to the office original determination in this matter on file in this office marked "Approved May 18, 1905, Francis Lee Stuart, Chief Engineer, Erie Railroad Company." (Grade Crossing Case No. 537.)

At the time of writing this report this overcrossing is nearing completion.

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#### XVII.

IN THE MATTER OF THE ANNULMENT OF THE DETERMINATION OF THIS BOARD, DATED MAY 24, 1900, ON THE PETITION OF THE ULSTER AND DELAWARE RAILROAD COMPANY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CLOSING AND DISCONTINUANCE OF TWO GRADE CROSSINGS OF ITS RAILROAD AT TWO PLACES EASTERLY OF AND ABOUT HALF A MILE DISTANT FROM THE WEST HURLEY STATION ON SAID RAILROAD.

Determination. May 31, 1905.

On May 24, 1900, this Board determined, under section 62 of the Railroad Law, on the petition of the Ulster and Delaware Railroad Company, that the highway known as the Ulster and Delaware Plank road, which crosses the Ulster and Delaware railroad at grade at two places easterly of and about half a mile distant from the West Hurley station on said railroad, should be so altered in location that it should not cross said railroad at the two points aforesaid but should cross said railroad overhead by the construction of a new bridge at a point where there is an existing overhead crossing of the railroad by a highway known as the Steenikill road, and should cross said railroad overhead by the construction of a bridge at another point easterly of the Steenikill road crossing where the railroad is in a cut, the alteration in the location of the highway and the points of overhead crossings to be substantially as shown by a blue print plan attached to said determination, and that the two grade crossings of said railroad aforesaid should be closed and discontinued when the relocation of the highway as aforesaid was accomplished. More than five years have elapsed since the determination of May 24, 1900. This Board during that time has repeatedly urged action on the part of the town toward acquiring the necessary land, but the town has refused to acquire the necessary land. The company undertook, at its own expense, to acquire the necessary land to change the course of the highway and close these crossings in a manner different from that set forth in said determination, but did not succeed in such project. Under these circumstances, and there being a sum of money belonging to the State held in suspense for the carrying out of this improvement which may be applied to such work at other points, this Board deems it wise and proper to nullify this proceeding.

This Board, therefore, hereby annuls its determination, under section 62 of the Railroad Law, dated May 24, 1900, in the matter of the petition of the Ulster and Delaware Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of two grade crossings of its railroad

at two places easterly of and about half a mile distant from the West Hurley station of said railroad.

This annulment of said determination does not preclude a new proceeding as to these crossings or either of them being begun under the statute in the future. (Grade Crossing Case No. 150.)

See page 58, 1st vol., report of this Board for 1900.

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### XVIII.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE LONG ISLAND ELECTRIC RAILWAY COMPANY (STREET SURFACE, ELECTRIC,) AS TO ITS RAILROAD CROSSING THE LONG ISLAND RAILROAD (STEAM) AT A POINT WHERE THE LONG ISLAND RAILROAD CROSSES AT GRADE THE JAMAICA AND HEMPSTEAD TURNPIKE HIGHWAY EAST OF QUEENS, BOROUGH OF QUEENS, NEW YORK CITY.

Determination. June 20, 1905.

This application, under section 68 of the Railroad Law, by the Long Island Electric Railway Company (street surface, electric,) was filed with this Board on February 24, 1905. It asks this Board to determine whether the double track electric railroad of the applicant company shall cross three tracks of the steam railroad of the Long Island Railroad Company at a point where the Long Island railroad crosses at grade the Jamaica and Hempstead Turnpike highway east of Queens, borough of Queens, New York city, above, below or at the grade of said steam railroad. A public hearing in this matter was held by this Board in the city of New York on June 20, 1905. William E. Stewart appeared for the applicant, Joseph F. Keany appeared for the Long Island Railroad Company. There was filed with the Board at this hearing an agreement between the Long Island Railroad Company and the Long Island Electric Railway Company as to a temporary crossing at grade. This agreement provides for the construction by this applicant of a single track of its railroad at grade across the Long Island railroad, the construction of a V-shaped copper trough on its trolley wire over the crossing, and provides for the construction and maintenance of switches and signals to protect the crossing. The agreement also provides that if the entire highway crossing of the steam railroad is not eliminated theretofore, the Long Island Electric Railway Company shall, on or before June 1, 1907, construct an overhead crossing of the steam railroad in lieu of the grade crossing.

Under these circumstances, and after consideration of the matter, this Board believes that it can properly determine that this crossing may be made at grade.

This Board, therefore, hereby determines, under section 68 of the Railroad Law, that a single track of the railroad of the Long Island Electric Railway Company shall temporarily cross the three tracks of the Long Island railroad at a point where the Long Island railroad crosses at grade the Jamaica and Hempstead Turnpike highway east (west) of Queens, borough of Queens, New York city, at the grade of said steam railroad tracks. This Board also hereby determines, under section 68 of the Railroad Law, that the proportion of expense of such crossing to be paid by each of said companies shall be as set forth in an agreement, dated June 19, 1905, between the Long Island Railroad Company and the Long Island Electric Railway Company, a duplicate original of which is filed in this office. This Board also hereby determines, under section 68 of the Railroad Law, that said temporary crossing at grade shall be protected in the manner set forth in said agreement; the proportion of expense of such protection to be paid by each of said companies to be as set forth in said agreement.

This determination as to this temporary crossing at grade shall be of no effect on and after the first day of June, one thousand nine hundred and seven.



## Supplemental Determination. July 6, 1905.

On June 20, 1905, this Board determined, under section 68 of the Railroad Law, that the single track railroad of the Long Island Electric Railway Company should, for a limited period stated in the determination, cross at grade the Long Island railroad at a point where the Long Island railroad crosses at grade the Jamaica and Hempstead Turnpike highway east (west) of Queens, borough of Queens, New York city. This determination provided for the construction of a V-shaped copper trough on the trolley wire of the Long Island Electric Railway Company, the plan of such V-shaped copper trough to be approved by this Board before construction. On July 1, 1905, the Long Island Electric Railway Company submitted to this Board a plan for a V-shaped trough to be constructed of brass instead of copper.

This board hereby approves the V-shaped brass trough to be constructed by the Long Island Electric Railway Company on its trolley wire at the said grade crossing of the Long Island Electric Railway Company's railroad and the Long Island railroad at a point where the Long Island railroad crosses at grade the Jamaica and Hempstead Turnpike highway east (west) of Queens, borough of Queens, New York city, a blue print plan of which brass trough is on file in this matter in this office, on condition that said brass trough extend about 50 feet from the nearest rail of the steam railroad on each side of the steam railroad. (Case No. 3303.)

At the time of writing this report derailing switches in the street railroad and the V-shaped brass trough referred to above have not been constructed although the electric railway company promises they will be.

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XIX.

**MODIFIED DETERMINATION IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF CATTARAUGUS.**

## Modified Determination. June 28, 1905.

Under date of June 14, 1904, this Board determined, under section 60 of the Railroad Law, how the single track railway of the Buffalo and Susquehanna Railway Company should cross streets, avenues and highways in the county of Cattaraugus. These crossings are confined to one town in said county, namely, the town of Freedom. On April 22, 1905, there was filed with this Board a petition of the town board and commissioner of highways of the town of Freedom, Cattaraugus county (joined in by the Buffalo and Susquehanna Railway Company), asking that this Board modify its determination of June 14, 1904, so that the railway of the Buffalo and Susquehanna Railway Company shall cross at grade the highway in said town known as the Section Line road highway instead of over the grade of said highway as set forth in said determination of June 14, 1904, and asking that this Board modify its determination of June 14, 1904, so that the railway of the Buffalo and Susquehanna Railway Company shall cross at grade the highway in said town known as the Sandusky Pike highway (No. 1) instead of over the grade of said highway as set forth in said determination of June 14, 1904, and asking that a new piece of highway be constructed on the westerly side of the right of way of said railway and asking that a new piece of highway be constructed on the easterly side of the right of way of said railway at said crossings which are near together. A public hearing on said petition, after notice as required by the statute, was given by this Board in the city of Auburn on June 28, 1905. Walter P. Cooke appeared for the company and for the town board and commissioner of highways. No one else appeared. After hearing arguments the hearing was closed. There

is filed with the petition of the town board and commissioner of highways a blue print map of the locality in question.

It appearing to this Board that the prayer of the petitioners should be granted, this Board, under section 60 of the Railroad Law, hereby modifies its said determination of June 14, 1904, so far as the Section Line road highway in said town of Freedom, Cattaraugus county, is concerned, and hereby determines under section 60 of the Railroad Law that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the said Section Line road highway in the town of Freedom, Cattaraugus county, at grade instead of over the grade of said highway known as the Section Line road as set forth in said determination of June 14, 1904, and this Board hereby determines under section 60 of the Railroad Law that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the said Sandusky Pike highway (No. 1) in the town of Freedom, Cattaraugus county, at grade instead of over the grade of said highway known as the Sandusky Pike highway (No. 1) as set forth in said determination of June 14, 1904, and this Board hereby determines under section 60 of the Railroad Law that a new piece of highway be constructed on the westerly side of the right of way of said railway and that a new piece of highway be constructed on the easterly side of the right of way of said railway at the locality in question, as shown on a blue print map of said locality attached to the petition on file in this office of the said town board and commissioner of highways of said town of Freedom, Cattaraugus county. (Grade Crossing Case No. 481.) See p. 128, 1st vol. 1904 report of this Board.

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## XX.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY UNDER SECTION 60 OF THE RAILROAD LAW FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS THE YORKSHIRE ROAD HIGHWAY IN THE TOWN OF YORKSHIRE, CATTARAUGUS COUNTY.

Determination. June 28, 1905.

This application by the Buffalo and Susquehanna Railway Company under section 60 of the Railroad Law was filed with this Board on April 11, 1905. The applicant asks the Board to determine the manner in which its single track railway shall cross the Yorkshire road highway in the town of Yorkshire, Cattaraugus county. A public hearing in the matter was held by this Board in the city of Auburn on June 28, 1905. Walter P. Cooke appeared for the petitioner. No one else appeared. The supervisor and commissioner of highways of the town of Sardinia, Erie county, were notified of this hearing, as well as the supervisor and commissioner of highways and town clerk of the town of Yorkshire, Cattaraugus county. On August 10, 1904, this Board determined under section 60 of the Railroad Law that this railway should cross at grade the highway known as the Yorkshire road in the town of Sardinia, Erie county. It is proposed now by the applicant that its railway shall not cross the Yorkshire road highway in the town of Sardinia, Erie county, but shall cross the Yorkshire road highway in the town of Yorkshire, Cattaraugus county, which town adjoins the town of Sardinia, Erie county. This Board in this determination annuls its determination of August 10, 1904, so far as the said determination of August 10, 1904, applies to the railway of this applicant crossing the Yorkshire road in the town of Sardinia, Erie county.

It appearing to this Board that the prayer of the petitioner should be granted, this Board hereby determines under section 60 of the Railroad Law that it would be impracticable for the single track railway of the Buffalo and Susquehanna Railway Company to cross otherwise than at grade the Yorkshire road highway in the town of Yorkshire, Cattaraugus county. This Board also hereby determines under section 60 of the Railroad Law that an

electric highway crossing alarm bell shall be maintained by said railway company on each side of its railway at said crossing at grade of said Yorkshire road highway by said railway in the town of Yorkshire, Cattaraugus county. This Board also under section 60 of the Railroad Law hereby annuls so much of the determination of this Board of August 10, 1904, under section 60 of the Railroad Law as applies to the railway of the Buffalo and Susquehanna Railway Company crossing the Yorkshire road highway in the town of Sardinia, Erie county. (Grade Crossing Case No. 538.) See p. 126, 1st vol. 1904 report of this Board.

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## XXI.

### MODIFIED DETERMINATION IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY UNDER SECTION 60 OF THE RAILWAY LAW FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ERIE.

Modified Determination. June 28, 1905.

Under date of August 10, 1904, this Board determined under section 60 of the Railroad Law how the single track railway of the Buffalo and Susquehanna Railway Company should cross streets, avenues and highways in certain towns in the county of Erie, among the towns being the town of Concord. On April 22, 1905, there was filed with this Board a petition of the town board and the acting commissioner of highways of the town of Concord (joined in by the Buffalo and Susquehanna Railway Company) asking that this Board modify its determination of August 10, 1904, in relation to the railway of the Buffalo and Susquehanna Railway Company crossing the highway in said town known as the Sibley road (sometimes called the Boston and Springville road). The said determination of August 10, 1904, was that the said railway should cross said highway at grade, the modification asked for in this petition being that the said highway should be diverted to the north and be carried over the said railway on a bridge. A public hearing on said petition, after notice as required by the statute, was given by this Board in the city of Auburn on June 28, 1905. Walter P. Cooke appeared for the company and for the town board and acting commissioner of highways. No one else appeared. After hearing arguments the hearing was closed. There is filed with the petition of the town board and acting commissioner of highways a blue print map of the locality in question, showing the proposed change of the highway.

It appearing to this Board that the prayer of the petitioner should be granted, this Board under section 60 of the Railroad Law hereby modifies its said determination of August 10, 1904, so far as the Sibley road (sometimes called the Boston and Springville road) highway in said town of Concord, Erie county, is concerned, and hereby determines under section 60 of the Railroad Law that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the said Sibley road (sometimes called the Boston and Springville road) highway in the town of Concord, Erie county, below the grade of said highway, it being the intention of the local authorities and the company that the said Sibley road (sometimes called the Boston and Springville road) highway shall be diverted to the north and cross said railway on a bridge, and this Board hereby determines under section 60 of the Railroad Law that the grades on the approaches to said bridge carrying said highway shall not exceed six per cent. (Grade Crossing Case No. 478.) See p. 126, 1st vol. 1904 report of this Board.

## XXII.

**MODIFIED DETERMINATION IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY UNDER SECTION 60 OF THE RAILROAD LAW FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ERIE.**

Modified Determination. June 28, 1905.

Under date of August 10, 1904, this Board determined under section 60 of the Railroad Law how the single track railway of the Buffalo and Susquehanna Railway Company should cross streets, avenues and highways in certain towns in the county of Erie, among the towns being the town of Hamburg. On June 17, 1905, there was filed with this Board a petition of the Buffalo and Susquehanna Railway Company (joined in by the town board and the highway commissioner of the town of Hamburg) asking that this Board modify its determination of August 10, 1904, so that the railway of the Buffalo and Susquehanna Railway Company shall cross the highway in said town known as Clark street below the grade of said highway instead of over the grade of the highway as set forth in said determination of August 10, 1904. A public hearing on said petition, after notice as required by the statute, was given by this Board in the city of Auburn on June 28, 1905. Walter P. Cooke appeared for the company. Perry M. Thorne, attorney, and John Schoepflin, supervisor, appeared for the town of Hamburg, in favor of the petition for modification. G. T. Rogers appeared for the Buffalo and Southern Railway Company whose railway is to be crossed at this crossing. After hearing arguments the hearing was closed.

On November 2, 1904, there was filed with this Board by the Buffalo and Susquehanna Railway Company an application for a modification of said determination of August 10, 1904, in regard to this said Clark street crossing, the modification asked for being that said railway should cross Clark street at grade, which application is superseded by this present petition under which this modified determination is made.

It appearing to this Board that the prayer of the petitioners should be granted, this Board under section 60 of the Railroad Law hereby modifies its said determination of August 10, 1904, so far as the Clark street highway in said town of Hamburg, Erie county, is concerned, and hereby determines under section 60 of the Railroad Law that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the said Clark street highway in the town of Hamburg, Erie county, below the grade of said Clark street highway instead of over the grade of said Clark street highway as set forth in said determination of August 10, 1904, and this Board hereby determines under section 60 of the Railroad Law that the bridge carrying said Clark street highway over said Buffalo and Susquehanna railway and the approaches to said bridge shall be as shown by a blue print plan attached with other papers to the office original determination in this matter on file in this office. (Grade Crossing Case No. 478.) See p. 126, 1st vol. 1904 report of this Board.

## XXIII.

**IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY UNDER SECTION 60 OF THE RAILROAD LAW FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ERIE.**

Supplemental Determination. June 28, 1905.

This application by the Buffalo and Susquehanna Railway Company under section 60 of the Railroad Law was in the main determined by this Board August 10, 1904. In said determination, however, the Board reserved for future determination the matter of certain crossings, as follows:

The Sardinia road in the town of Sardinia,  
 The Middle road in the town of Concord,  
 Sharp street in the town of Concord,  
 The Genesee road in the town of Concord,  
 The Howard road in the town of Hamburg,  
 Lake avenue in the town of Concord and village of Bladell,  
 The Ridge road in the town of West Seneca.

On June 28, 1905, Walter P. Cooke, attorney for the company, appeared before the Board in the city of Auburn and asked for a determination as to all of these crossings except that of the Ridge road in the town of West Seneca in which crossing, he stated, the Pennsylvania Railroad Company is interested; he also stated that he had agreed with the attorney of the Pennsylvania Railroad Company not to ask for a determination as to this crossing without notice to the Pennsylvania Railroad Company.

After consideration of the evidence

1. This Board hereby determines, under section 60 of the Railroad Law, that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the Sardinia road highway in the town of Sardinia, Erie county, over the grade of said highway.

2. This Board hereby determines, under section 60 of the Railroad Law, that it would be impracticable for the single track railway of the Buffalo and Susquehanna Railway Company to cross otherwise than at grade the Middle road highway in the town of Concord, Erie county.

3. This Board hereby determines, under section 60 of the Railroad Law, that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the Sharp street highway in the town of Concord, Erie county, over the grade of said highway.

4. This Board hereby determines, under section 60 of the Railroad Law, that it would be impracticable for the single track railway of the Buffalo and Susquehanna Railway Company to cross otherwise than at grade the Genesee road highway in the town of Concord, Erie county.

5. This Board hereby determines, under section 60 of the Railroad Law, that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the Howard road in the town of Hamburg, Erie county, over the grade of said highway.

6. This Board hereby determines, under section 60 of the Railroad Law, that the single track railway of the Buffalo and Susquehanna Railway Company shall cross the Lake avenue highway in the town of Concord and village of Bladell, Erie county, over the grade of said highway. (Grade Crossing Case No. 478.) See p. 126, 1st vol. 1904 report of this Board.

#### XXIV.

IN THE MATTER OF THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF ELMIRA, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CLOSING OF THE PENNSYLVANIA AVENUE AND PARTRIDGE STREET GRADE CROSSINGS OF THE ERIE RAILROAD IN SAID CITY AND THE CONSTRUCTION OF ONE UNDERCROSSING OF SAID RAILROAD TO BE SITUATED ABOUT MIDWAY BETWEEN THE CENTER LINES OF SAID EXISTING GRADE CROSSINGS.

Determination. July 6, 1905.

This petition, by the mayor and common council of the city of Elmira, under section 62 of the Railroad Law, was filed with this Board on June 15, 1899. It alleges that public safety requires an alteration in the manner in which streets known as Pennsylvania avenue and Partridge street cross the Erie railroad in said city, it being proposed to carry said Pennsylvania avenue and said Partridge street under the railroad by means of one undercrossing to be situated about midway between the center lines of the said existing grade crossings, and the said existing grade crossings to be closed and discontinued. A public hearing in the matter, after notice as required by the statute, was given by this Board in the city of Elmira on June

29, 1899. At this hearing M. O'Connor appeared for the city; John B. Stanchfield appeared for the Erie Railroad Company; E. G. Herendeen appeared for Harris, McHenry and Baker, property owners; George McCann appeared for William H. Blight and Hattie Blight, property owners; Frank Fitzgerald appeared for the heirs of Martin Frawley, property owners; Mrs. Etta P. Norwood, a property owner, appeared in person; James M. Rae, a property owner, appeared in person. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. An adjourned hearing in this matter was held in the city of Elmira on September 8, 1902, at which Charles B. Swartwood appeared for the city; John C. Dyott appeared for Morris Condon, James M. Rae, Mr. Landon, R. H. Walker and Mattie L. Dyott, property owners, in favor of the petition; E. G. Herendeen appeared for the Harris, McHenry and Baker Company, property owners, in opposition; George McCann appeared for H. P. Blight, a property owner, in opposition; Mary Fitzgerald appeared for the estate of Martin Frawley, in opposition; Mrs. Etta P. Norwood, a property owner, appeared in person; Frederick Collin appeared for the Erie railroad. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The Board is of the opinion that no further hearing on this petition is necessary. The opposition to this application is based upon what might be the result in flood time on property east of the railroad.

After consideration of the evidence in this matter, this Board is of the opinion that it would not be justified in determining at this time that these crossings of the Erie railroad should be closed and the undercrossing of said railroad as proposed constructed. The prayer of the petitioners is, therefore, denied. (Grade Crossing Case No. 117.)

## XXV.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK, AUBURN AND LANSING RAILROAD COMPANY UNDER SECTION 60 OF THE RAILROAD LAW FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF CAYUGA.

Determination. July 6, 1905.

This application, by the New York, Auburn and Lansing Railroad Company, under section 60 of the Railroad Law, was filed with this Board on May 22, 1905. The applicant asks the Board to determine the manner in which its single track railway shall cross the following streets, avenues and highways in Cayuga county, to wit:

### *City of Auburn.*

1. The highway known as Underwood street.
2. The highway known as Wallace street.
3. The highway known as Lafayette place.

### *Town of Aurelius.*

4. The highway known as Genesee road.
5. The highway known as Pinckney road.

### *Town of Fleming.*

- 5½. The highway known as Dougal road.
6. The highway at a point known as Post crossing.
7. The highway at a point known as Shepard crossing.
8. The highway known as Union Springs road.
9. The highway at a point known as Pease's crossing.
10. The highway known as the Gravel road.
11. The highway known as Town Line road.

*Town of Scipio.*

12. The highway known as Gully road.
13. The highway at a point known as William Smith crossing.
14. The highway at a point known as Redman crossing.
15. The highway known as Scipioville road.
16. The highway known as Indian Field road.
17. The highway known as Aurora road.
18. The highway known as the Scipio Town Line road.

*Town of Venice.*

19. The highway known as Mill street.
20. The highway known as State road.
21. The highway known as Donovan road.
22. The highway known as Tile Kiln road.
23. The highway known as Creek road.
24. The highway known as Ledyard road.

*Town of Genoa.*

25. The highway known as Genoa Town Line road.
26. The highway known as Creek road.
27. The highway known as Main street.
28. The highway known as Starner road.
29. The highway known as Creek road.

Public hearings in this matter were held by this Board in Auburn on June 28 and in Albany on July 6, 1905. E. C. Aiken and Herbert A. Clark appeared for the applicant; Frank S. Coburn appeared on June 28 for the town of Aurelius as to proposed crossing of Genesee street in said town by the applicant's railroad. An inspection of and report as to these crossings was made by the superintendent of the grade crossing bureau.

After consideration of the evidence, this Board hereby determines under section 60 of the Railroad Law that it would be impracticable for the single track railway of the New York, Auburn and Lansing Railroad Company to cross otherwise than at grade the streets, avenues and highways hereinafter named except where a method of crossing otherwise than at grade is hereinafter named and in such cases this Board hereby determines that said crossings by said single track railway shall be over the highway as hereinafter set forth.

*City of Auburn.*

1. At grade the highway known as Underwood street.
2. At grade the highway known as Wallace street.
3. Over the grade of the highway known as Lafayette place.

*Town of Aurelius.*

4. At grade the highway known as Genesee street.
5. At grade the highway known as Pinckney road.

*Town of Fleming.*

6. At grade the highway known as Dougal road.
6. At grade the highway at a point known as Post crossing.
7. At grade the highway at a point known as Shepard crossing.
8. At grade the highway known as Union Springs road.
9. At grade the highway at a point known as Pease's crossing.
10. At grade the highway known as the Gravel road.
11. At grade the highway known as Town Line road.

*Town of Scipio.*

12. At grade the highway known as Gully road.
13. At grade the highway at a point known as William Smith crossing.
14. At grade the highway at a point known as Redman crossing.
15. At grade the highway known as Scipioville road.
16. At grade the highway known as Indian Field road.
17. At grade the highway known as Aurora road.
18. At grade the highway known as the Scipio Town Line road.

*Town of Venice.*

19. Over the grade of the highway known as Mill street.
20. At grade the highway known as State road.
21. At grade the highway known as Donovan road.
22. At grade the highway known as Tile Kiln road.
23. Over the grade of the highway known as Creek road.
24. At grade the highway known as Ledyard road.

*Town of Genoa.*

25. Over the grade of the highway known as Genoa Town Line road.
26. At grade the highway known as Creek road.
27. At grade the highway known as Main street.
28. At grade the highway known as Starner road.
29. At grade the highway known as Creek road.

(Grade Crossing Case No. 541.) At the time of writing this report these crossings are not constructed.

## XXVI.

IN THE MATTER OF THE APPLICATION OF THE ERIE RAILROAD COMPANY (STEAM), UNDER SECTION 36 OF THE RAILROAD LAW, FOR APPROVAL OF AN INTERLOCKING SWITCH AND SIGNAL APPARATUS PROPOSED TO BE INSTALLED AT A GRADE CROSSING OF THE ERIE RAILROAD AND THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD (STEAM) EAST OF THE STATION IN BINGHAMTON.

Modified Determination. July 6, 1905.

On November 2, 1904, this Board, under section 36 of the Railroad Law, approved an interlocking switch and signal apparatus proposed to be installed at a point where the Erie railroad and the Delaware, Lackawanna and Western railroad cross at grade in Binghamton east of the station, a plan of which apparatus is attached to the office original determination in this matter on file in this office. On July 3, 1905, there was filed with the Board by the Erie Railroad Company three blue prints of a plan for this apparatus, embodying some changes from the plan approved on November 2, 1904. The approval of the Board of this plan was asked. These changes do not affect protection at the crossing.

This Board hereby approves, under section 36 of the Railroad Law, the said changed plan for the interlocking switch and signal apparatus proposed to be installed at a point where the Erie railroad and the Delaware, Lackawanna and Western railroad cross at grade in Binghamton east of the station, a copy of which plan is attached to the office original modified determination in this matter on file in this office. (Case No. 3237.)

This switch and signal apparatus is under construction at the time of writing this report. See p. 149, 1st vol. 1904 report of this Board.



## XXVII.

IN THE MATTER OF THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF OSWEGO UNDER SECTION 62 OF THE RAILROAD LAW AS TO THE CONSTRUCTION OF AN UNDERCROSSING OF THE NEW YORK CENTRAL AND HUDSON RIVER AND THE NEW YORK, ONTARIO AND WESTERN RAILROADS BY EAST SEVENTH STREET IN SAID CITY.

August 5, 1905.

The matter of this petition was closed on August 5, 1905. A determination on another petition having been made by this Board, which determination follows. (Grade Crossing Case No. 507.) See p. 148, 1st vol. 1904 report of this Board.

## XXVIII.

IN THE MATTER OF THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF OSWEGO UNDER SECTION 62 OF THE RAILROAD LAW.

Determination. August 14, 1905.

This petition, by the mayor and common council of the city of Oswego, under section 62 of the Railroad Law, was filed with this Board on February 21, 1905. It alleges that public safety requires the closing and discontinuance of the East Fourth street and the closing and discontinuance of the Schuyler street grade crossings of the railroad operated by the New York Central and Hudson River Railroad Company and of the railroad of the New York, Ontario and Western Railway Company in said city and the construction of a new street from East Fourth street to Schuyler street to divert the travel from the present East Fourth street grade crossing of said railroads and from the present Schuyler street grade crossing of said railroads through Schuyler street to an undercrossing of said railroads which the petition asks this Board to determine, under section 62 of the Railroad Law, shall be constructed under said railroads at the point where East Seventh street and Schuyler street intersect in said city, and asks this Board to determine, under section 62 of the Railroad Law, that said crossings of said railroads shall be closed, said new street constructed and said undercrossing of said railroads constructed. A public hearing on this petition, after notice as required by the statute, was held by this Board in the city of Oswego on August 5, 1905. John Tiernan, corporation counsel, appeared for the petitioners; George H. Walker appeared for the New York Central and Hudson River Railroad Company; E. Canfield, general superintendent, C. E. Knickerbocker, engineer, maintenance of way, and George Marsden appeared for the New York, Ontario and Western Railway Company; L. C. Rowe appeared for the chamber of commerce of the city in favor of the petition; Captain Coulling, U. S. A., appeared in favor of the petition, the proposed undercrossing leading to the fort at Oswego; George W. Davis appeared for property owners on East Fourth street in opposition to the closing of the East Fourth street crossing. After hearing evidence and arguments the evidence was closed, but the matter was held open. A petition signed by James H. Farrell and others against the closing of the East Fourth street crossing was filed with the Board at this hearing. Subsequently, a brief in opposition to the petition, in behalf of Mrs. Catherine O'Connor, a property owner, was filed with this Board.

It seems to the Board from the evidence that public safety requires that the said crossings of said railroads should be closed and new street constructed and new undercrossing of said railroads constructed. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the East Fourth street grade crossing and the Schuyler street grade crossing of the railroad operated by the New York Central and Hudson River Railroad Company and of the railroad of the New York, Ontario and Western Rail-

way Company in the city of Oswego shall be closed and discontinued, the travel on said grade crossings to be diverted therefrom, through the construction of a new street from East Fourth street to Schuyler street, through Schuyler street to an undercrossing of said railroads to be constructed at the point where East Seventh street and Schuyler street intersect in said city, which new piece of street and undercrossing this Board hereby determines, under section 62 of the Railroad Law, shall be constructed. This Board also hereby determines, under section 62 of the Railroad Law, that the said East Fourth street and the said Schuyler street grade crossings of said railroads shall not be closed and discontinued until the said new piece of street and said undercrossing of said railroads are constructed and ready for use by the public. (Grade Crossing Case No. 527.)

At the time of writing this report detail plans, specifications and estimate of expense for this work have been approved by this Board. The New York, Ontario and Western Railway Company is to do the work, sending to this Board the proposals of contractors for furnishing the bridge. (See No. XXVI preceding.)

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### XXIX.

IN THE MATTER OF THE PETITION OF THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CLOSING AND DISCONTINUANCE OF THREE GRADE CROSSINGS OF ITS RAILWAY BY HIGHWAYS NEAR ITS CRYSTAL RUN STATION IN THE TOWN OF WALLKILL, ORANGE COUNTY, AND THE CONSTRUCTION OF NEW PIECES OF HIGHWAY AND ONE OVERHEAD BRIDGE CROSSING OF SAID RAILWAY.

Determination. August 14, 1905.

This petition, by the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, was filed with this Board on December 31, 1903. It alleges that public safety requires an alteration in the manner in which three highways in the town of Wallkill, Orange county, cross said company's railway at points near the Crystal Run station on said railway, the crossings now being at grade and being located,—the first near the land of W. J. Brown, the second immediately north of said station and the third near the land of the Slaughter estate,—and asks this Board to determine that said grade crossings shall be closed and discontinued the travel thereon to be diverted by the construction of new pieces of highway on each side of the railway to an overhead bridge crossing of said railway which the petition asks this Board to determine shall be constructed about at the point of the Slaughter estate crossing. A public hearing on this petition, after notice as required by the statute, was held by Commissioner Dickey (by delegation of the Board) at the Crystal Run station on said railway on July 19, 1905. E. Canfield, C. E. Knickerbocker and George Marsden appeared for the petitioner; H. B. Royce, attorney, E. Smith Webb, supervisor, William Bull, David W. Shaw, William Puff, highway commissioner, and Seeley Greene, highway commissioner, appeared for the town board of the town of Wallkill in favor of the petition; Mrs. A. C. Ireland, a property owner, appeared in person; W. F. Brown, a property owner, appeared in person; C. W. Harland, a property owner, appeared in person; Mrs. W. R. Wisner, a property owner, appeared in person; Dr. A. C. Santee also appeared. Mr. Brown appeared in opposition; the other property owners appeared tentatively in opposition. After hearing evidence and arguments the evidence was closed, but the matter was held open. From statements of the property owners at this hearing it appeared that they desired that, if the petition is granted, the order shall contain a provision that the proposed new piece of highway on the south side of the railway shall at some points be placed further away from the railway than is shown on the plan attached to the petition in this case. The company acquiesced in this desire and filed with

the Board blue print copies of a plan showing the proposed new piece of highway on the south side of the railway further away from the railway at some points.

It seems to this Board that public safety requires that these crossings should be closed and discontinued and the new pieces of highway and overhead bridge crossing of said railway constructed. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossings at grade of the New York, Ontario and Western Railway by three highways in the town of Wallkill, Orange county, at points near the Crystal Run station on said railway, the first being located near the land of W. J. Brown, the second immediately north of said station and the third near the land of the Slaughter estate, shall be closed and discontinued the travel thereon to be diverted therefrom by the construction of new pieces of highway on each side of the railway to an overhead bridge crossing of said railway to be located about at the point of the Slaughter estate crossing, which said new pieces of highway and said overhead bridge crossing of said railway this Board hereby determines, under section 62 of the Railroad Law, shall be constructed. This Board also hereby determines, under section 62 of the Railroad Law, that said new pieces of highway and said overhead bridge crossing shall be located substantially as shown on a blue print plan dated December 1, 1903, attached to this determination. This Board also, under section 65 of the Railroad Law, hereby approves an approximate estimate of the cost of said work amounting to eleven thousand six hundred and thirty dollars (\$11,630), which estimate, however, does not include the cost of obtaining the necessary land for the new pieces of highway which cost has not been ascertained at this date. This Board also hereby determines, under section 62 of the Railroad Law, that the said three grade crossings of said railway shall not be closed and discontinued until the said new pieces of highway and said overhead bridge crossing of said railway are constructed and ready for use by the public. (Grade Crossing Case No. 459.)

Detail plans for this work have been approved by this Board. The company is to do the work itself, sending to this Board the proposals of contractors for furnishing the bridge.

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### XXX.

IN THE MATTER OF THE PETITION OF THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CLOSING AND DISCONTINUANCE OF TWO HIGHWAY GRADE CROSSINGS OF ITS RAILWAY AT ITS STONY FORD STATION IN THE TOWN OF WALLKILL, ORANGE COUNTY, AND THE CONSTRUCTION OF NEW PIECES OF HIGHWAY AND AN OVERHEAD BRIDGE CROSSING OF SAID RAILWAY TO BE LOCATED BETWEEN THE TWO EXISTING GRADE CROSSINGS.

Determination. August 14, 1905.

This petition, by the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, was filed with this Board on July 29, 1903. It alleges that public safety requires an alteration in the manner in which two highways in the town of Wallkill, Orange county, cross the New York, Ontario and Western railway, near the Stony Ford station on said railway, the crossings, now being at grade and being known, respectively, as the Creamery crossing and the Montgomery road crossing, and asks this Board to determine that said grade crossings shall be closed and discontinued, the travel thereon to be diverted by the construction of new pieces of highway on each side of the railway to an overhead bridge crossing of said railway, which the petition asks this Board to determine shall be constructed at a point about midway between the two said existing grade crossings. A public hearing on this petition, after notice as required by the statute, was held by Commissioner Dickey (by delegation of this Board)

at the Stony Ford station on said railway on July 19, 1905. E. Canfield, C. E. Knickerbocker and George Marsden appeared for the petitioner; H. B. Royce, attorney, E. Smith Webb, supervisor, William Bull, David W. Shaw, William Puff, highway commissioners, and Seeley Greene, highway commissioner, appeared for the town board of the town of Wallkill in favor of the petition; J. H. Ford, a property owner, appeared in person, not in opposition to the petition. After hearing evidence and after an explanation of the proposed changes by Mr. Knickerbocker, who is engineer, maintenance of way of the petitioning company, the matter was held open, there to be no further hearing.

It seems to this Board that public safety requires that these crossings should be closed and discontinued and the new pieces of highway and overhead bridge crossing of said railway constructed. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossings at grade of the New York, Ontario and Western railway by two highways in the town of Wallkill, Orange county, near the Stony Ford station on said railway, the crossings being known, respectively, as the Creamery crossing and the Montgomery road crossing, shall be closed and discontinued the travel thereon to be diverted therefrom by the construction of new pieces of highway on each side of the railway to an overhead bridge crossing of said railway to be located at a point about midway between the said two existing grade crossings, which said new pieces of highway and said overhead bridge crossing of said railway this Board hereby determines, under section 62 of the Railroad Law, shall be constructed. This Board also hereby determines, under section 62 of the Railroad Law, that said new pieces of highway and said overhead bridge, crossings shall be located substantially as shown on a blue print plan dated July 2, 1903, attached to this determination. This Board also, under section 65 of the Railroad Law, hereby approves a plan for said overhead bridge dated July 3, 1903, a copy of which is attached to the office original determination in this matter on file in this office. This Board, also under section 65 of the Railroad Law, hereby approves an approximate estimate for said work amounting to eight thousand two hundred and thirty-eight dollars and sixty cents (\$8,238.60), which estimate, however, does not include the cost of obtaining the necessary land for the new pieces of highway, which cost has not been ascertained at this date. This Board also hereby determines, under section 62 of the Railroad Law, that the said two grade crossings of said railway shall not be closed and discontinued until the said new pieces of highway and said overhead bridge crossing of said railway are constructed and ready for use by the public. (Grade Crossing Case No. 442.)

The company is doing this work itself and will send to this Board for approval the proposals of contractors for furnishing the bridge.

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### XXXI.

IN THE MATTER OF THE APPLICATION OF THE ITHACA-CORTLAND TRACTION COMPANY UNDER SECTION 68 OF THE RAILROAD LAW AS TO ITS RAILROAD CROSSING THE LEHIGH VALLEY RAILROAD AT FOUR POINTS BETWEEN ITHACA AND CORTLAND.

August 24, 1905.

This application by the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, was filed with this Board on January 31, 1905. It asked for a determination as to how the street surface electric railroad of the applicant should cross the Lehigh Valley railroad at four points between Ithaca and Cortland. A public hearing on said application was given by this Board in Albany on February 15, 1905, at which it was determined that the applicant should file with the Board plans in detail showing the structure proposed (the crossings to be all overhead). These plans were

not filed on August 24, the case was closed. It may be reopened on application by the applicant. (Case No. 3294.) See Nos. IX, X, XI, in this volume under this title.

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### XXXII.

IN THE MATTER OF THE COMPLAINT OF J. W. SIMPSON, OF MIDDLETOWN, AGAINST THE POCHUCK RAILROAD COMPANY AS TO A HIGHWAY GRADE CROSSING AND AS TO NOT CARRYING PASSENGERS.

August 24, 1905.

This complaint by J. W. Simpson, of Middletown, against the Pochuck Railroad Company, was filed with this Board on June 20, 1905. It alleged that a crossing of a highway by said company's railroad was dangerous and that the railroad did not carry passengers. A copy of the complaint was sent to the company which answered that all trains stop before crossing the highway. A copy of the answer was sent to the complainant who replied. A report in the matter was made by the inspector of this Board, as follows:

" \* \* \* This road was built on account of extensive stone quarries on Pochuck mountain and almost the entire business done by the road is the hauling of stone from this quarry. A little milk is carried and at times some fruit and other farm products; the business, however, is very light and trains do not run regularly. The grade is extremely steep,—211 feet per mile; therefore the railroad desires to take up as little weight as possible and does not take its passenger car. For a time passengers desiring to go were carried in the milk car, but the company considering this dangerous, discontinued carrying them. Your inspector has been over the road in previous years when passengers were carried, but rarely saw more than one or two, and generally none on the train, and it is evident that persons desiring to ride are infrequent. Regarding the highway crossing complained of,—the rock referred to has not been removed, and there is no bell at the crossing. From best information obtainable, your inspector not seeing any trains on the road while there, trains going up the grade do not stop before crossing the highway, as the view from that direction is unobstructed. Trains going down the grade are required to stop before crossing the highway, and I was unable to learn that they had failed to do so. \* \* \* "

The complainant was notified that, " \* \* \* This Board on consideration of the complaint, the answer of the company, your reply to that answer, and a report from one of its inspectors (a copy of which is herewith enclosed), has determined not to proceed further in the matter of your complaint. \* \* \* " (Case No. 3371.)

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### XXXIII.

IN THE MATTER OF THE COMPLAINT OF WARNER J. WALKER, OF COBLESKILL, AGAINST THE DELAWARE AND HUDSON COMPANY, AS TO A HIGHWAY CROSSING.

August 24, 1905.

This complaint by Warner J. Walker, of Cobleskill, against The Delaware and Hudson Company was filed with this Board on July 12, 1905. It alleged that a "proposed new railroad" was to cross at grade a highway

in the town of Cobleskill. This Board communicated with The Delaware and Hudson Company on the subject and that company answered that, " \* \* \* The track in question is simply a siding which is being built (by The Delaware and Hudson Company) for the accommodation of the stone crushing plant of Hamilton & Wood. \* \* \* "

A copy of the answer was sent to complainant who was informed that, " \* \* \* It would seem that the matter of this switch track crossing is one within the jurisdiction of local authorities. \* \* \* " The case was closed. (Case No. 3384.)

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#### XXXIV.

IN THE MATTER OF THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF MOUNT VERNON, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO CHANGING THE MOUNT VERNON AVENUE AND OAK STREET GRADE CROSSINGS OF THE NEW YORK AND HARLEM RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) FROM GRADE TO OVERCROSSINGS.

August 24, 1905.

The matter of this petition was closed, there being a new petition in relation to these and other crossings of said railroad in and near Mount Vernon pending before this Board.

See p. 116, 1st vol. 1904 report of this Board, as to recommendation to the Union Railway Company as to said company stationing a crossing watchman at the said Mount Vernon avenue crossing. This recommendation was withdrawn during the year (after a report by the electrical expert of this Board) because of changed conditions at this crossing through the operation of the electric cars via another line. (Grade Crossing Case No. 282.)

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#### XXXV.

IN THE MATTER OF THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF NIAGARA FALLS, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE PINE STREET CROSSING OF THE ERIE RAILROAD AND THE RIGHT OF WAY OF THE BUFFALO, THOUSAND ISLANDS AND PORTLAND RAILROAD COMPANY IN SAID CITY.

Determination. August 24, 1905.

This petition, by the mayor and common council of the city of Niagara Falls, under section 62 of the Railroad Law, was filed with this Board on October 27, 1900. It alleges that public safety requires an alteration in the manner in which Pine street (or avenue) in said city crosses the Erie railroad, and asks this Board to determine that said crossing shall be changed from grade and the street or avenue carried over the railroad by an overhead bridge. The petition states that adjoining the Erie railroad is the right of way of the Buffalo, Thousand Islands and Portland Railroad Company (steam), on which no railroad has ever been constructed. At the time of writing this determination no railroad is in existence on this right of way. A public hearing, after notice as required by the statute, was held in the city of Buffalo on February 4, 1901. Subsequently adjourned hearings were held,—in Buffalo on May 24, 1901, in Niagara Falls on April 9, 1902, and in Buffalo on May 6 and July 22, 1903. At the hearing on February 4, 1901, F. J. Mackenna, city attorney, appeared for the petitioners;

Eugene Cary appeared for Mary E. Jackson, a property owner; a letter was received from Louisa M. Marshall, a property owner; W. P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; W. L. Marcy appeared for the Erie Railroad Company. At the hearing on May 24, 1901, F. J. Mackenna, city attorney, appeared for the petitioners; George F. Brownell and W. L. Marcy appeared for the Erie Railroad Company; W. P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; Eugene Cary appeared for Mary E. Jackson, a property owner; Morris Cohn, Jr., appeared for Louisa M. Marshall, a property owner. At the hearing on April 9, 1902, F. J. Mackenna, city attorney, appeared for the petitioners; W. C. Cannon appeared for the Erie Railroad Company; Frederick Chormann appeared for Louisa M. Marshall, a property owner; Walter P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; George C. Shepard appeared for Mrs. Shepard, a property owner; Eugene Cary appeared for Mary E. Jackson, a property owner. On this date the Board inspected the crossing in question. At the hearing on May 6, 1903, John H. Hancock, mayor, Augustus Thibaudeau, city attorney, and other city officials appeared for the petitioners; Henry W. Sprague and H. A. Taylor appeared for the Erie Railroad Company; Walter P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; Eugene Cary appeared for Mary E. Jackson, a property owner; Morris Cohn, Jr., appeared for Louisa M. Marshall, a property owner. At the hearing on July 22, 1903, Augustus Thibaudeau, city attorney, and other city officials appeared for the petitioners; W. L. Marcy appeared for the Erie Railroad Company; Walter P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; Eugene Cary appeared for Mary E. Jackson, a property owner, and also entered the appearance of Morris Cohn, Jr., for Louisa M. Marshall, a property owner. At this hearing the evidence was closed, but the matter was held open. The Board has not heretofore determined this matter because of the condition of the appropriation to pay the State's proportion (one-quarter) of the cost of the abolition of grade crossings of steam railroads, and because of a question which arose as to whether or not the overhead bridge (if the Board determined it should be constructed) should cross the right of way of the Buffalo, Thousand Islands and Portland Railroad Company as well as the Erie Railroad or the approach to a bridge over the Erie railroad alone should obstruct in Pine street the right of way of the Buffalo, Thousand Islands and Portland Railroad Company, the railroad of which company as stated above is not constructed and which has a right of way abutting on each side of Pine street. On this question other hearings were given on July 26 and December 14, 1904, and August 5, 1905, at which Augustus Thibaudeau, city attorney, and F. J. Mackenna, city attorney, appeared for the petitioners; Walter P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; and Henry W. Sprague and W. L. Marcy appeared for the Erie Railroad Company. At the hearing on August 5, 1905, Walter P. Cooke, for the Buffalo, Thousand Islands and Portland Railroad Company, agreed that the bridge should be constructed so as not to obstruct the right of way of that railroad company, said company to participate in the cost in accordance with the statute.

It seems to this Board from the evidence that public safety requires that this crossing should be changed from grade to an overhead crossing. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossing at grade of the Erie railroad and the Buffalo, Thousand Islands and Portland railroad by Pine street (or avenue—the Buffalo, Thousand Islands and Portland railroad not being constructed, but its right of way abutting upon each side of Pine street—or avenue) in the city of Niagara Falls shall be changed from grade and that said street (or avenue) shall be carried over the Erie railroad and the Buffalo, Thousand Islands and Portland railroad (the Buffalo, Thousand Islands and Portland railroad not being constructed, but its right of way abutting upon each side of Pine street—or avenue) above the grade of said railroads by means of a bridge. (Grade Crossing Case No. 293.)

At the time of writing this report detail plans, specifications, detailed estimate of expense or proposals of contractors for this work have not yet been submitted here, but plans have been submitted to the city by the Erie Railroad Company before being submitted to this Board.

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XXXVI.

IN THE MATTER OF THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF NIAGARA FALLS, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE NIAGARA STREET GRADE CROSSING OF THE ERIE RAILROAD AND THE RIGHT OF WAY OF THE BUFFALO, THOUSAND ISLANDS AND PORTLAND RAILROAD COMPANY IN SAID CITY.

Determination. August 24, 1905.

This petition, by the mayor and common council of the city of Niagara Falls, under section 62 of the Railroad Law, was filed with this Board on July 28, 1904. It alleges that public safety requires an alteration in the manner in which a street known as Niagara street crosses the railroad of the Erie railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company in said city, and asks this Board to determine that said crossing shall be changed from grade to an undercrossing of the railroads. The Buffalo, Thousand Islands and Portland railroad is not constructed, but has a right of way abutting on each side of Niagara street. A public hearing on this petition, after notice as required by the statute, was held in the city of Niagara Falls on August 25, 1904. Augustus Thibaudeau, city attorney, appeared for the petitioners; W. L. Marcy appeared for the Erie Railroad Company, generally; Walter P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; W. B. Rankine appeared for the Niagara Falls Power Company, generally. Without the taking of evidence the hearing was adjourned to a date to be thereafter fixed, this date not to be fixed until requested by the city. Subsequently adjourned hearings were held on August 4, 1905, in Niagara Falls, and August 15, 1905, in New York city. At these subsequent hearings F. J. Mackenna, city attorney, appeared for the petitioners; Walter P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company; W. L. Marcy appeared for the Erie Railroad Company; King, Leggett & Brown appeared for the Electric City Railway Company; Augustus Thibaudeau appeared for Charles A. Terwilliger, a property owner. After hearing evidence and arguments at the hearing on August 15, 1905, the hearing was closed, but the matter was held open.

It seems to this Board from the evidence that public safety requires that this crossing should be changed from grade to an undercrossing of the Erie railroad alone and irrespective of the right of way of the Buffalo, Thousand Islands and Portland Railroad Company, and this determination does not include the right of way of the Buffalo, Thousand Island and Portland Railroad Company notwithstanding the reference to said right of way in the petition. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossing at grade of the railroad of the Erie Railroad Company by Niagara street in the city of Niagara Falls shall be changed from grade to an undercrossing of said Erie railroad. (Grade Crossing Case No. 501.)

At the time of writing this report detail plans, specifications, detail estimate of expense, or proposals of contractors for this work have not yet been submitted here.



## XXXVII.

IN THE MATTER OF THE PETITION OF THE TOWN BOARD OF THE TOWN OF DEER PARK, ORANGE COUNTY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CASKEY'S GRADE CROSSING OF THE ERIE RAILROAD AT SPARROW BUSH IN SAID TOWN.

Determination. August 24, 1905.

This petition, by the town board of the town of Deer Park, Orange county, under section 62 of the Railroad Law, was filed with this Board on January 5, 1904. It alleges that public safety requires an alteration in the manner in which a highway leading from Port Jervis to Sparrow Bush crosses the Erie railroad in Sparrow Bush in said town at a point known as Caskey's crossing, or (if it is not found practicable to alter the manner of crossing at Caskey's crossing which is now at grade) that a new piece of highway be constructed from said Caskey's crossing to the Sparrow Bush grade crossing of said railroad nearby and the new piece of highway be carried under the railroad at the location of the present Sparrow Bush grade crossing. A public hearing on this petition, after notice as required by the statute, was held by this Board in the city of New York on November 12, 1904. C. E. Cuddeback appeared for the petitioner; H. B. Fullerton appeared for Katherine A. Fullerton, a property owner, in favor of the petition; J. Van Inwegen, a property owner, appeared in person in favor of the petition; H. A. Taylor appeared for the Erie Railroad Company in favor of the petition if a new piece of highway was to be constructed from Caskey's crossing to the Sparrow Bush crossing and an undercrossing of the railroad made at the latter point, after hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed, pending a consultation between the representatives of the town and the company as to the matter; it being understood that perhaps another hearing would not be held. On July 20, 1905, Commissioner Baker (by delegation of this Board) in this matter conferred at Port Jervis with representatives of the company and the town there being present at the conference H. A. Taylor, attorney, and Mason R. Strong, C. E., for the Erie Railroad Company, and C. E. Cuddeback, attorney, W. H. Nearpass, supervisor, W. S. Bevans, town clerk, Henry Maine, justice of the peace, C. J. Van Inwegen, E. B. Crane, George Reimer, highway commissioner, for the town. Commissioner Baker inspected the crossings and locality. It was agreed at the conference that representatives of the company and the town should endeavor to agree upon a plan for the construction of an undercrossing of the railroad near the existing Caskey's grade crossing. Such a plan was agreed upon by such representatives and a copy of it was submitted to this Board. It provides for the construction of pieces of new highway and an undercrossing of the railroad near the existing Caskey's grade crossing.

It seems to this Board from the evidence that public safety requires that the Caskey's grade crossing shall be closed and new pieces of highway and an undercrossing of the railroad nearby should be constructed. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossing at grade of the Erie railroad by a highway leading from Port Jervis to Sparrow Bush at a point known as Caskey's crossing in Sparrow Bush in the town of Deer Park, Orange county, shall be closed and discontinued, the travel thereon to be diverted therefrom by the construction of new pieces of highway and an undercrossing of said railroad, the center line of said undercrossing to be located at a point about 200 feet easterly of the center line of the present said grade crossing, which said new pieces of highway and undercrossing of said railroad this Board hereby determines, under section 62 of the Railroad Law, shall be constructed. This Board also hereby determines, under section 62 of the Railroad Law, that the said new pieces of highway and the said undercrossing shall be constructed substantially as shown on a blue print plan on file with the papers in this matter in this office, which plan bears the approval of the town of Deer Park and the Erie Railroad Company. This board also hereby determines, under section 62 of

the Railroad Law, that the present Caskey's grade crossing of said railroad shall not be closed and discontinued until said new pieces of highway and said new undercrossing are constructed and ready for use by the public. (Grade Crossing Case No. 464.)

Detail plans, specifications and estimate of expense for this work have been approved by this Board. Proposals of contractors have not yet been submitted here.

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### XXXVIII.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, AS TO A SWITCH TRACK OF ITS NEW YORK AND PUTNAM DIVISION CROSSING THE YONKERS RAILROAD (SINGLE TRACK, STREET SURFACE, ELECTRIC,) IN LAKE AVENUE IN THE CITY OF YONKERS.

Determination. August 24, 1905.

This application, by the New York Central and Hudson River Railroad Company, under section 68 of the Railroad Law, was filed with this Board on June 3, 1905. The application asks for a determination by this Board as to whether a switch track of the New York and Putnam division of the applicant company shall cross the Union railway (the Yonkers railroad—single track, street surface, electric,) in Lake avenue in the city of Yonkers above, below or at the grade of the Union railway (the Yonkers railroad), the petition asking that the crossing may be made at grade. The petition also asks this Board to determine, under section 60 of the Railroad Law, how said switch track shall cross streets in Yonkers, but, inasmuch as section 60 excepts from its provisions "additional switchings and sidings," the company was informed that this Board would not consider that portion of the petition as to crossing streets. A public hearing in this matter, after notice, was given by the Board in the city of Yonkers on August 2, 1905. C. C. Paulding appeared for the applicant; H. A. Robinson appeared for the Yonkers Railroad Company; Francis A. Winslow appeared for the city of Yonkers; J. C. Shotts appeared in person. After hearing evidence and arguments the hearing was closed. It appeared at this hearing that while the application named the Union railway as the owner of the electric railroad track it is in fact owned by the Yonkers Railroad Company. Mr. Robinson who appeared for the Yonkers Railroad Company waived this defect in the application.

The steam railroad track in question is to be but a switch track leading to a storehouse of a carpet works over which there will be but little traffic. The Yonkers Railroad Company did not oppose a crossing at grade.

Under the circumstances, and after consideration of the evidence, this Board has concluded that it would be justified in determining that this crossing by the steam railroad track of the electric railway may be made at grade. This Board, therefore, hereby determines, under section 68 of the Railroad Law, that a switch track of the New York and Putnam division of the New York Central and Hudson River railroad shall cross the single track of the Yonkers railroad (electric) in Lake avenue in the city of Yonkers at the grade of said single track of the Yonkers railroad. This Board also hereby determines, under section 68 of the Railroad Law, that the entire expense of said crossing shall be paid by the New York Central and Hudson River Railroad Company. (Grade Crossing Case No. 542.)

This crossing has been constructed.

## XXXIX.

IN THE MATTER OF THE APPLICATION OF THE VILLAGE OF CANTON, UNDER SECTION 61 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER A NEW STREET IN SAID VILLAGE TO BE KNOWN AS PLEASANT STREET SHALL CROSS THE ROME, WATERTOWN AND OGDENSBURG RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) OVER, UNDER OR AT THE GRADE OF SAID RAILROAD.

Determination. August 24, 1905.

This application, by the village of Canton, under section 61 of the Railroad Law, was filed with this Board on May 4, 1905. The petition asks the Board to determine whether a new street in said village to be known as Pleasant street and connecting Main and Judson streets shall cross the Rome, Watertown and Ogdensburg railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. A public hearing on this application, after notice as required by the statute, was held by this Board in the city of Albany on August 14, 1905. John R. Keeler appeared for the applicant; George H. Walker appeared for the New York Central and Hudson River Railroad Company in opposition to a crossing at grade. After hearing evidence and arguments the evidence was closed, but the matter was held open. An inspection of the proposed point of crossing and a report were made by an inspector of this Board.

After consideration of the evidence in this matter, this Board does not believe that it would be justified in permitting this crossing to be made at grade. This Board, therefore, hereby determines, under section 61 of the Railroad Law, that the said new street in the village of Canton to be known as Pleasant street and connecting Main and Judson streets shall cross the Rome, Watertown and Ogdensburg railroad (leased to and operated by the New York Central and Hudson River Railroad Company) above the grade of said railroad. When the village of Canton signifies to this Board its readiness to carry such street across such railroad above the grade of the railroad this Board will then determine the height, the length and the material of the bridge by means of which such street shall be carried across such railroad and the length, character and grades of the approaches thereto. (Grade Crossing Case No. 540.)

Nothing further has been heard from the village of Canton in this matter.

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XL.

IN THE MATTER OF A PETITION, UNDER SECTIONS 62 AND 65 OF THE RAILROAD LAW AND CHAPTER 376 OF THE LAWS OF 1902, BY THE MAYOR OF THE CITY OF SCHENECTADY, THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AND THE DELAWARE AND HUDSON COMPANY AS TO CHANGE OF PLAN AT THE LIBERTY STREET UNDERCROSSING IN WHAT IS KNOWN AS THE SCHENECTADY IMPROVEMENT, BEING CARRIED OUT IN PURSUANCE OF A DETERMINATION OF THIS BOARD, UNDER SECTION 62 OF THE RAILROAD LAW AND CHAPTER 376 OF THE LAWS OF 1902, DATED OCTOBER 9, 1902.

Determination. August 24, 1905.

This petition, by the mayor of the city of Schenectady, the New York Central and Hudson River Railroad Company and The Delaware and Hudson Company, under sections 62 and 65 of the Railroad Law and chapter 376 of

the Laws of 1902, was filed with this Board on July 8, 1905. It asks this Board to approve a change in the revised general plan for what is known as the Schenectady improvement (elimination of grade crossings of the New York Central and Hudson River railroad and the railroad operated by The Delaware and Hudson Company, in which matter this Board has made a determination, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902,) so that Liberty street in the city of Schenectady shall be opened to a width of 40 feet for use by teams and pedestrians, instead of it to be (as provided by said revised general plan) an undercrossing for pedestrians only. Said revised general plan was approved by this Board on February 17, 1904. A public hearing on this petition was given by this Board in Albany on August 14, 1905, after public notice and personal notice to the city, property owners and railroad companies. George H. Walker appeared for the New York Central and Hudson River Railroad Company; Daniel Naylor, city attorney, appeared for the city; J. H. Cane, a property owner, appeared in favor of the petition. After hearing evidence and arguments the evidence was closed, but the matter was held open. There is filed with this Board a white print of a plan showing Liberty street, widened and asked for in the petition, which white print plan is approved and signed by the mayor, superintendent of public works and the city engineer of the city of Schenectady and by James MacMartin, chief engineer of The Delaware and Hudson Company, and by W. J. Wilgus, vice-president, and C. J. Parker, principal assistant engineer, of the New York Central and Hudson River Railroad Company. Three other copies of this white print plan bearing such approval and signatures were also filed with the Board and upon being approved and signed by this Board have been returned to the New York Central and Hudson River Railroad Company, which is to furnish one of said copies to the city, one to The Delaware and Hudson Company and retain one in its own files; the one retained in this office also bears the approval and signature of this Board.

After consideration of this matter, this Board believes that the revised general plan for the undercrossing at Liberty street should be changed from one for pedestrians only to one for teams and pedestrians as petitioned for. In its original determination in this matter, dated October 9, 1902, this Board approved a general plan for this Schenectady improvement work showing an under foot-way for pedestrians only at Liberty street, but the circumstances as developed at the hearing August 14, 1905, on this petition and the unanimous approval of the city authorities and the railroad companies in the opinion of this Board justifies the Board in approving the change proposed to an undercrossing at Liberty street for both teams and pedestrians. This Board, therefore, hereby determines, under sections 62 and 65 of the Railroad Law and chapter 376 of the Laws of 1902, that the revised general plan for what is known as the Schenectady improvement (eliminating of grade crossings of the New York Central and Hudson River railroad and the railroad operated by The Delaware and Hudson Company, in which matter this Board has made a determination, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902,) shall be so changed that Liberty street in said city of Schenectady shall be opened to a width of 40 feet for use by teams and pedestrians, instead of it to be (as provided by said revised general plan approved by this Board February 17, 1904,) an undercrossing for pedestrians only, this change being shown by a white print plan attached to the office original determination in this matter of the widening of the Liberty street undercrossing on file in this office.

This determination applies alone to the changes from the said approved revised general plan shown on said white print plan as provided for the said opening of Liberty street to a width of 40 feet. (Grade Crossing Case No. 369.)

See page 164, 1st vol., 1902, report of this Board. This work is under construction.

## XLI.

IN THE MATTER OF THE PETITION OF THE TOWN BOARD OF THE TOWN OF EAST HAMBURG, ERIE COUNTY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE BUFFALO ROAD HIGHWAY GRADE CROSSING OF THE BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY IN SAID TOWN.

Determination. August 29, 1905.

This petition, by the town board of the town of East Hamburg, Erie county (joined in by the Buffalo, Rochester and Pittsburgh Railway Company), under section 62 of the Railroad Law, was filed with this Board on March 18, 1903. It alleges that public safety requires that a grade crossing of the Buffalo, Rochester and Pittsburgh railway by a highway known as the Buffalo road at a point between Bigtree road and Deuel's Corners shall be changed from grade and that said Buffalo road highway shall be carried under said railway in an undercrossing. A public hearing on this petition, after notice as required by the statute, was held by this Board in the city of Albany on April 1, 1903. John S. Rockwell appeared for the petitioners and for the Buffalo, Rochester and Pittsburgh Railway Company. An adjourned hearing on this petition was held in New York city on August 29, 1905, at which John S. Rockwell appeared as before; F. F. Holmwood, supervisor, and Charles Hoag, highway commissioner of the town, also appeared in favor of the petition at this adjourned hearing. After hearing evidence and arguments the hearing was closed.

It seems to this Board from the evidence that public safety requires that this crossing should be changed from grade to an undercrossing of the railroad. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossing at grade of the Buffalo, Rochester and Pittsburgh railway by the Buffalo road highway at a point between Bigtree road and Deuel's Corners in the town of East Hamburg, Erie county, shall be changed from grade to an undercrossing of said railway. (Grade Crossing Case No. 419.)

The company is to do this work itself; proposals of contractors for the bridge to be submitted here.

## XLII.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE NEW YORK AND LONG ISLAND TRACTION COMPANY (STREET SURFACE, ELECTRIC,) AS TO CROSSING THE LONG ISLAND RAILROAD (ROCKAWAY BRANCH—STEAM) AT THE INTERSECTION OF OCEAN AVENUE AND ROCKAWAY PLANK ROAD IN THE BOROUGH OF QUEENS, NEW YORK CITY, AND AS TO CROSSING THE RIGHT OF WAY OF THE JAMAICA AND SOUTH SHORE RAILWAY COMPANY, IN THE BOROUGH OF QUEENS, NEW YORK CITY.

October 2, 1905.

At page 155, first volume, 1904 report of this Board, will be found the determination in this matter; the crossings to be at grade. The crossings have been constructed and are protected as set forth in the determination. A review by writ of certiorari of the determination as to the Long Island railroad crossing is pending in the courts. (Case No. 3087.)

## XLIII.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK AND LONG ISLAND TRACTION COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER ITS SINGLE TRACK ELECTRIC RAILROAD SHOULD CROSS THE LONG ISLAND RAILROAD (STEAM), AT FOUR POINTS, ABOVE, BELOW OR AT THE GRADE OF SAID STEAM RAILROAD.

October 2, 1905.

At page 214, first volume, 1903 report of this Board, will be found a determination of this Board that the crossings in question should be overhead crossings of the steam railroad. Three of the overhead crossings, those at Rockville Center, Valley Stream and Springfield have been built; at the time of writing this report, the one at Mineola has not been. (Case No. 2981.)

## XLIV.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE ROCHESTER, SYRACUSE AND EASTERN RAILROAD COMPANY (STREET SURFACE, ELECTRIC,) AS TO ITS RAILROAD CROSSING THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD (STEAM) AND THE WEST SHORE RAILROAD (STEAM—LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) AT FOUR POINTS.

Determination. October 10, 1905.

This application, under section 68 of the Railroad Law, by the Rochester, Syracuse and Eastern Railroad Company (street surface, electric,) was filed with this Board on August 17, 1905. It asks this Board to determine whether the double track railroad (street surface, electric,) of the applicant company shall cross the New York Central and Hudson River railroad (steam) and the West Shore railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at four points, viz.:

1. The Auburn branch of the New York Central and Hudson River railroad near Brighton station (it being proposed that the railroad of the applicant shall cross the steam railroad at this point above the grade of the steam railroad);

2. The West Shore railroad at a point about one and one-half miles west of Fairport (it being proposed that the railroad of the applicant shall cross the steam railroad at this point below the grade of the steam railroad);

3. The New York Central and Hudson River railroad and the West Shore railroad (one bridge) at a point about half way between the villages of Newark and Lyons (it being proposed that the railroad of the applicant shall cross the steam railroads at this point above the grade of the steam railroads); above, below or at the grade of the steam railroads, the crossings being proposed as set forth above. A public hearing in this matter was held by this Board in the city of Albany on September 5, 1905. William Nottingham appeared for the applicant company; George H. Walker appeared for the New York Central and Hudson River Railroad Company, not in opposition. There was filed with the Board a copy of an agreement between the applicant company and the New York Central and Hudson River Railroad Company for itself and as lessee of the West Shore railroad providing for under and overcrossings as set forth above.

This Board hereby determines, under section 68 of the Railroad Law, that the double track railroad of the Rochester, Syracuse and Eastern Railroad Company shall cross the New York Central and Hudson River railroad and the West Shore railroad (leased to and operated by the New York Central

and Hudson River Railroad Company) at four points hereinafter set forth in the manner hereinafter set forth, to wit:

1. The Auburn branch of the New York Central and Hudson River railroad (steam) near its Brighton station, above the grade of said steam railroad.

2. The West Shore railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at a point about one and one-half miles west of Fairport, below the grade of the steam railroad.

3. The New York Central and Hudson River railroad (steam) and the West Shore railroad, lessor (steam), at a point about half way between the villages of Newark and Lyons, above the grade of the steam railroads on one bridge.

This Board also hereby determines, under section 68 of the Railroad Law, that the proportion of expense of said crossings to be paid by each of said companies shall be as set forth in an agreement, dated February 25, 1905, between the New York Central and Hudson River Railroad Company and the Rochester, Syracuse and Eastern Railroad Company. (Case No. 3404.)

At the time of writing this report this railroad and these crossings are under construction.

#### XLV.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE ELECTRIC CITY RAILWAY COMPANY (STREET SURFACE, ELECTRIC,) AS TO ITS RAILROAD CROSSING THE ERIE RAILROAD (STEAM) AND THE RIGHT OF WAY OF THE BUFFALO, THOUSAND ISLANDS AND PORTLAND RAILROAD COMPANY (STEAM) ON NIAGARA STREET, NIAGARA FALLS.

Determination. October 10, 1905.

This application, under section 68 of the Railroad Law, by The Electric City Railway Company (street surface, electric,) was filed with this Board on July 6, 1905. It asks this Board to determine that the applicant's railway may temporarily cross at grade the Erie railroad (steam) and the right of way of the Buffalo, Thousand Islands and Portland railroad (not constructed) on Niagara street in the city of Niagara Falls. At the time this application was filed there was pending before this Board the petition, under section 62 of the Railroad Law, of the mayor and common council of the city of Niagara Falls that this Niagara street crossing of said existing steam railroad and right of way should be changed from grade, the street to pass under, and the application of The Electric City Railway Company is that its railway be permitted to cross temporarily at grade and when the undercrossing is constructed it be determined that it shall cross in that. This Board has determined, under section 62, that the undercrossing shall be constructed.

Public hearings on this application were held by this Board on August 4, in Niagara Falls, and on August 15, 1905, in New York city. King, Leggett & Brown appeared for the applicant; F. J. Mackenna, corporation counsel, appeared for the city; W. L. Marcy appeared for the Erie Railroad Company; W. P. Cooke appeared for the Buffalo, Thousand Islands and Portland Railroad Company.

After consideration of the evidence this Board believes that it would not be justified in determining that this crossing by the electric railway of the Erie railroad may be made at grade temporarily. A crossing at grade would be dangerous and there is not, in our opinion, sufficient reason for permitting it pending the construction of the undercrossing.

That part of the application relating to a temporary crossing at grade is, therefore, hereby denied. (Case No. 3380.)

See determination as to the undercrossing in this volume under this title.

## XLVI.

IN THE MATTER OF THE COMPLAINT OF LAMSON PONTIUS AND SIDNEY ESHENOUR  
AGAINST THE LEHIGH VALLEY RAILROAD COMPANY AS TO OVERHEAD BRIDGE  
CROSSING.

October 10, 1905.

This complaint, by Lamson Pontius and Sidney Eshenour of the town of Fayette, Seneca county, against the Lehigh Valley Railroad Company, was filed with this Board on October 3, 1905. It alleged that the company intended to raise a highway bridge over its railroad near the residences of complainants which would be dangerous and inconvenient for the public. An inspection of the bridge and a report were made by the superintendent of the grade crossing bureau in this department and complainants were informed that, " \* \* \* It would seem that this is a matter within the jurisdiction of the local authorities of the town. \* \* \*" The case was closed. (Case No. 3429.)

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## XLVII.

IN THE MATTER OF THE COMPLAINT OF THE COMMON COUNCIL OF THE CITY OF  
SCHENECTADY AGAINST THE NEW YORK CENTRAL AND HUDSON RIVER RAIL-  
ROAD COMPANY AS TO AN UNDERCROSSING.

October 10, 1905.

This complaint, by the common council of the city of Schenectady against the New York Central and Hudson River Railroad Company was filed with this Board on October 3, 1905. It alleged that a stone arch carrying the railroad over the Villa road highway in said city should be replaced by a bridge. A report in the matter was made by the superintendent of the grade crossing bureau in this department and the city was informed that the matter was one in which the Board had no jurisdiction. The case was closed. (Case No. 3428.)

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## XLVIII.

IN THE MATTER OF THE COMPLAINT OF MRS. JAMES R. TOWNSEND AGAINST THE  
LONG ISLAND RAILROAD COMPANY AS TO A GRADE CROSSING.

October 10, 1905.

This complaint, by Mrs. James R. Townsend, against the Long Island Railroad Company was filed with this Board on August 3, 1905. It was in relation to a grade crossing of the Port Jefferson branch of said company's railroad. Complainant was informed of the provisions of section 62 of the Railroad Law as to the abolition of grade crossings of steam railroads and it was suggested that she communicate with the town board on the subject of a petition being presented to this Board under section 62. The case was closed. (Case No. 3427.)



## XLIX.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE NEW YORK, AUBURN AND LANSING RAILROAD COMPANY (STEAM-ELECTRIC) AS TO ITS RAILROAD CROSSING THE CAYUGA DIVISION OF THE LEHIGH VALLEY RAILROAD IN AUBURN.

Determination. October 10, 1905.

This application, under section 68 of the Railroad Law, by the New York, Auburn and Lansing Railroad Company (steam-electric) was filed with this Board on January 28, 1905. It asks this Board to determine whether the single track railroad of the applicant company shall cross the Cayuga division of the Lehigh Valley railroad in Auburn at a point where the yard of the Lehigh Valley railroad is located, above, below or at the grade of said Lehigh Valley railroad, it being proposed that the crossing shall be above grade. A public hearing in this matter was held by this Board in the city of New York on March 1, 1905. E. C. Aiken appeared for the applicant; Taber & Brainerd appeared for the Lehigh Valley Railroad Company. There is filed with this Board a copy of an agreement between the Lehigh Valley Railway Company, lessor, the Lehigh Valley Railroad Company, lessee, and the New York, Auburn and Lansing Railroad Company as to an overcrossing by the last named company's railroad of the Cayuga division of the Lehigh Valley railroad at this point.

This Board hereby determines, under section 68 of the Railroad Law, that the single track railroad of the New York, Auburn and Lansing Railroad Company shall cross the railroad and yard of the Cayuga division of the Lehigh Valley railroad in Auburn above the grade of said Lehigh Valley railroad and yard. This Board also hereby determines, under section 68 of the Railroad Law, that the proportion of expense of such crossing to be paid by each of said companies shall be as set forth in an agreement, verified September 27, 1905, between the Lehigh Valley Railway Company, the Lehigh Valley Railroad Company and the New York, Auburn and Lansing Railroad Company. (Case No. 3292.)

At the time of writing this report this crossing is not constructed.

## L.

IN THE MATTER OF THE COMPLAINT OF MRS. MARGARET E. ROSECRANS AGAINST THE ALBANY AND HUDSON RAILROAD COMPANY.

October 10, 1905.

This complaint, by Mrs. Margaret E. Rosecrans, of Nassau, against the Albany and Hudson Railroad Company was filed with this Board on September 26, 1905. It alleged that the company was contemplating discontinuing the stopping of its cars at the Rosecrans crossing. A copy of the complaint was sent to the company which answered that, " \* \* \* The matter of cutting out this stop has not been considered by the management up to the present time. \* \* \* " The complainant was so informed and the case was closed. (Case No. 3424.)

## LL

IN THE MATTER OF THE APPLICATION OF THE HUDSON VALLEY RAILWAY COMPANY (STREET SURFACE, ELECTRIC,) UNDER SECTION 68 OF THE RAILROAD LAW AS TO CROSSING THE STEAM RAILROAD OPERATED BY THE DELAWARE AND HUDSON COMPANY IN BROADWAY IN THE VILLAGE OF FORT EDWARD.

Modified Determination. July 6, 1905.

It is hereby determined by this Board that the time limit in the determination of this Board, dated July 19, 1904, authorizing the continuance of a temporary grade crossing by the Hudson Valley railway of The Delaware and Hudson Company's railroad in Broadway in the village of Fort Edward, namely, July 1, 1905, shall be and is hereby extended during the months of July and August, 1905, so that said temporary grade crossing by the Hudson Valley railway of the railroad operated by The Delaware and Hudson Company in Broadway in the village of Fort Edward may exist during said months; this extension of time being granted pending a hearing on the application of the Hudson Valley Railway Company for an indefinite extension of time for the maintenance of this crossing at grade, which hearing will be held by this Board at its office in the capitol, Albany, August 14, 1905, at 2 p. m. (Case No. 2685.)

The hearing in this matter was postponed indefinitely at request of counsel, with the understanding that the crossing at grade may exist until the hearing and determination, and with the further understanding that an application may be made by either of the companies, upon thirty days' notice to the other, for the setting of a date for hearing. See p. 133, 1st vol. 1904 report of this Board.

## LII.

IN THE MATTER OF THE PETITION OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY UNDER SECTION 62 OF THE RAILROAD LAW AS TO A GRADE CROSSING OF THE WEST SHORE RAILROAD, ITS LESSOR, NEAR PALMYRA.

October 11, 1905.

This petition was withdrawn, but the crossing has been closed. (Grade Crossing Case No. 484.)

## LIII.

IN THE MATTER OF THE APPLICATION OF THE CITY OF NEW YORK, UNDER SECTION 61 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER EAST ONE HUNDRED AND SIXTY-SEVENTH STREET IN THE BOROUGH OF THE BRONX IN SAID CITY SHALL CROSS THE NEW YORK AND HARLEM RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) OVER, UNDER OR AT THE GRADE OF SAID RAILROAD.

Determination. October 11, 1905.

This application, by the city of New York, under section 61 of the Railroad Law, was filed with this Board on February 24, 1905. The petition asks the Board to determine whether East One Hundred and Sixty-seventh street in the borough of the Bronx in said city shall cross the New York and Harlem railroad (leased to and operated by the New York Central and

Hudson River Railroad Company) over, under or at the grade of said railroad. A public hearing on this application, after notice as required by the statute, was held by this Board in the city of New York on April 26, 1905. R. H. Mitchell, assistant corporation counsel, appeared for the city; Charles Baxter appeared for the Property Owners' Association of the Twenty-third Ward, in favor of the application; George H. Walker appeared for the New York Central and Hudson River Railroad Company. It was stated by Mr. Mitchell that for the present the city only desired a determination that a bridge for foot passengers should be constructed at the point in question and not a bridge to carry vehicles. Mr. Walker desired further time in which to state the position of the company in the matter. After discussion the hearing was held open, pending a possible further hearing, with the understanding that if no request was received by this Board for a further hearing the hearing was to be considered closed. No such request was received, but, on the contrary, this Board was informed by the company that it did not desire a further hearing.

This Board hereby determines for the present, under section 61 of the Railroad Law, that East One Hundred and Sixty-seventh street, borough of the Bronx, New York city, so far as foot passengers alone are concerned, shall cross the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River railroad Company) above the grade of said railroad on an overhead bridge for foot passengers only. This Board will hereafter determine the height, the length and the material of the said bridge for foot passengers only, and the length, character and grades of the approaches thereto. (Grade Crossing Case No. 529.)

This Board has asked the company to send here for approval a plan for this foot bridge having endorsed thereon, if practicable, the approval of the city authorities, and has notified the city authorities to this effect. At the time of writing this report this plan has not been received.

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#### LIV.

IN THE MATTER OF THE PETITION OF THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CLOSING AND DISCONTINUANCE OF A HIGHWAY GRADE CROSSING OF ITS RAILWAY AT ITS CENTERVILLE STATION IN THE TOWN OF FALLSBURGH, SULLIVAN COUNTY, AND THE CONSTRUCTION OF NEW PIECES OF HIGHWAY AND AN OVERHEAD BRIDGE CROSSING OF SAID RAILWAY NEARBY.

Determination. October 11, 1905.

This petition by the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, was filed with this Board on December 31, 1903. It alleges that public safety requires an alteration in the manner in which a highway known as the Centerville road crosses the railway of said company (the crossing being at grade) at the Centerville station on said railway in the town of Fallsburgh, Sullivan county, and asks this Board to determine that said crossing shall be closed and discontinued, the travel thereon to be diverted therefrom by the construction of new pieces of highway to an overhead bridge crossing of said railway to be located at a point about three hundred feet north of the said existing grade crossing, which said new pieces of highway and overhead bridge crossing the petition asks this Board to determine shall be constructed. A public hearing on this petition, after notice as required by the statute, was held by Commissioner Dickey (by delegation of the Board) at Centerville on July 19, 1905. E. Canfield, C. E. Knickerbocker and George Marsden appeared for the petitioner;

George H. Smith, attorney Delbert Merritt, supervisor, L. W. Lawrence, highway commissioner, R. J. Broome and Morris Downey, justices of the peace, and George Eidel, town clerk, appeared for the town board, in opposition; Ellsworth Baker and George H. Smith appeared for property owners, in opposition. After hearing evidence and arguments the hearing was adjourned. The adjourned hearing was held by Commissioners Dickey and Aldridge (by delegation of the Board) at Centerville on September 12, 1905, at which George Maraden appeared for the petitioner; Ellsworth Baker appeared for property owners, in opposition; several members of the town board were witnesses. After hearing evidence and arguments the matter was held open. The commissioners inspected the crossing and locality.

After consideration of the evidence this Board does not feel justified in granting the prayer of the petitioner at this time. The prayer of the petitioner is, therefore, denied. (Grade Crossing Case No. 458.)

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#### LV.

IN THE MATTER OF THE APPLICATION OF THE VILLAGE OF LYONS FALLS, UNDER SECTION 61 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER A CONTINUATION OF CHARLOTTE STREET IN SAID VILLAGE SHALL CROSS THE UTICA AND BLACK RIVER RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) OVER, UNDER OR AT THE GRADE OF SAID RAILROAD.

Determination. October 11, 1905.

This application, by the village of Lyons Falls, under section 61 of the Railroad Law, was filed with this Board on June 9, 1905. The petition asks the Board to determine whether a continuation of Charlotte street in said village shall cross the Utica and Black River railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. A public hearing on this application, after notice as required by the statute, was held by this Board in the city of Albany on August 14, 1905. H. W. Bentley appeared for the applicant; George H. Walker appeared for the New York Central and Hudson River Railroad Company, in opposition to a crossing at grade. After hearing evidence and arguments the evidence was closed but the matter was held open. An inspection of the proposed point of crossing and a report were made by an inspector of this Board.

After consideration of the evidence in this matter this Board does not believe that it would be justified in permitting this crossing to be made at grade. This Board, therefore, hereby determines, under section 61 of the Railroad Law, that the said continuation of Charlotte street in the village of Lyons Falls shall cross the Utica and Black River railroad (leased to and operated by the New York Central and Hudson River Railroad Company) above the grade of said railroad. When the village of Lyons Falls signifies to this Board its readiness to carry such continuation of said street across said railroad above the grade of the railroad this Board will then determine the height, the length and the material of the bridge by means of which such continuation of said street shall be carried across said railroad and the length, character and grades of the approaches thereto. (Grade Crossing Case No. 544.)

At the time of writing this report nothing has been heard from the village as to its intention to carry the street over the railroad above grade.

## LVI.

IN THE MATTER OF THE PETITION OF THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE CLOSING AND DISCONTINUANCE OF THREE HIGHWAY GRADE CROSSINGS OF ITS RAILWAY NEAR ITS LIVINGSTON MANOR STATION IN THE TOWN OF ROCKLAND, SULLIVAN COUNTY, AND THE CONSTRUCTION OF A NEW PIECE OF HIGHWAY AND ONE OVERHEAD BRIDGE CROSSING OF SAID RAILWAY.

Determination. October 11, 1905.

This petition by the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, was filed with this Board on December 31, 1903. It alleges that public safety requires an alteration in the manner in which a highway leading from Livingston Manor to Rockland crosses the railway of said company in the town of Rockland, Sullivan county, at points known as (1) the Martin crossing and (2) the Mott crossing, and also in the manner in which a highway crosses said railway in said town at a point known as the Bussey crossing, and asks this Board to determine that said Martin crossing, Mott crossing and Bussey crossing (which are now grade crossings) shall be closed and discontinued, the travel thereon to be diverted therefrom by the construction of a new piece of highway (which the petition asks this Board to determine shall be constructed) on the westerly side of said railway from the highway leading past Livingston Manor station, northerly, to an overhead bridge crossing of said railway which the petition asks this Board to determine shall be constructed at a point on the Cyrus Mott farm, near the cemetery, north of the existing Mott grade crossing. A public hearing on this petition, after notice as required by the statute, was held by Commissioners Dickey and Aldridge (by delegation of this Board) at the Livingston Manor station on said railway on September 12, 1905. George Marsden appeared for the petitioner; J. M. Maybee appeared for property owners, in opposition, and for the town board of the town of Rockland, not in opposition; W. B. Voorhies, supervisor of the town, appeared in favor of the petition. After hearing arguments the arguments were closed but the matter was held open. The commissioners inspected the crossings and locality and reported to this Board.

It seems to this Board that public safety requires that these crossings should be closed and discontinued and the new piece of highway and overhead bridge crossing of said railway constructed. This Board, therefore, hereby determines, under section 62 of the Railroad Law, that the crossings at grade of the New York, Ontario and Western Railway by a highway leading from Livingston Manor to Rockland in the town of Rockland, Sullivan county, at points known as (1) the Martin crossing and (2) the Mott crossing, and the crossing at grade of said railway by a highway in said town at a point known as the Bussey crossing, shall be closed and discontinued, the travel thereon to be diverted therefrom by the construction of a new piece of highway on the westerly side of said railway from the highway leading past Livingston Manor station, northerly, to an overhead bridge crossing of said railway to be located at a point on the Cyrus Mott farm, near the cemetery, north of the existing Mott grade crossing, which said new piece of highway and said overhead bridge crossing of said railway this Board hereby determines, under section 62 of the Railroad Law, shall be constructed. This Board also hereby determines, under section 62 of the Railroad Law, that said new piece of highway and said overhead bridge crossing shall be located substantially as shown on a blue print plan, dated December 8, 1903, attached to the petition in this matter on file in this office. This Board also hereby determines, under section 62 of the Railroad Law, that the said three grade crossings of said railway shall not be closed

and discontinued until the said new piece of highway and said overhead bridge crossing of said railway are constructed and ready for use by the public. This Board also, under section 65 of the Railroad Law, hereby approves an approximate estimate of the cost of said work amounting to eighteen thousand and fifty-six dollars and fifty cents (\$18,056.50) which estimates, however, does not include the cost of obtaining the necessary land for the new piece of highway which cost has not been ascertained at this date. (Grade Crossing Case No. 462.)

At the time of writing this report detail plans and specifications or proposals of contractors for this work have not yet been submitted here.

## LVII.

IN THE MATTER OF THE APPLICATION OF THE TOWN BOARD OF THE TOWN OF HUNTER, GREENE COUNTY, UNDER SECTION 61 OF THE RAILROAD LAW AS TO AN EXTENSION OF A HIGHWAY IN SAID TOWN CROSSING THE ULSTER AND DELAWARE RAILROAD.

Determination. October 11, 1905.

This application, by the town board of the town of Hunter, Greene county, under section 61 of the Railroad Law, was filed with this Board on July 12, 1905. The petition asks the Board to determine whether an extension of a highway in said town shall cross the Ulster and Delaware railroad over, under or at the grade of said railroad. The highway in question as now existing is described as follows:

Beginning at a point in the center of the public road or highway (formerly) the Hunter turnpike near the easterly end of Hunter village, fifty-four (54) feet from the northeasterly corner of lands of James Jackson, and running thence south fifty (50) degrees and fourteen (14) minutes west about eighty (80) feet to the center of the Schoharie Kill creek; thence continuing south thirty-nine (39) degrees and ten (10) minutes west about four hundred (400) feet to a point in the northerly bounds of lands of the Ulster and Delaware Railroad Company, thirty-nine (39) feet and nine (9) inches easterly from the center of the stream or brook known generally as the Shanty Hollow creek. Said line of survey being the center line of said highway, which highway is of the uniform width of three (3) rods.

The said proposed extension of said highway is described as follows:

Commencing at the southerly end of said existing highway at the northerly bounds of the lands of the Ulster and Delaware Railroad Company and continuing thence sixty-six (66) feet diagonally across the said last mentioned lands to the southerly bounds thereof.

A public hearing, after notice as required by the statute, was given by this Board in the city of Albany on September 5, 1905. M. Lackey, Jr., appeared for the applicant; Amos Van Etten appeared for the Ulster and Delaware Railroad Company, not in opposition to a crossing at grade. After hearing arguments the arguments were closed but the matter was held open. Letters were received from residents of the vicinity in favor of a crossing at grade.

After consideration of this matter, this Board deems that it would be justified in determining that this crossing may be made at grade. This Board, therefore, hereby determines, under section 61 of the Railroad Law, that the crossing of the Ulster and Delaware railroad by an extension of a highway (hereinabove described) in the town of Hunter, Greene county, shall be at the grade of said railroad, the crossing to be properly planked and a railroad highway crossing sign to be constructed and maintained thereat. An existing crossing of the railroad at grade used by the public will be closed when the crossing referred to in this determination is opened. (Grade Crossing Case No. 555.)

The new crossing at grade has been made as set forth in the determination and the old grade crossing has been closed.

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LVIII.

IN THE MATTER OF THE APPLICATION OF THE ERIE RAILROAD COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH AN EXTENSION OF ITS RAILROAD IN THE CITY OF BINGHAMTON SHALL CROSS STATE STREET IN SAID CITY.

Determination. October 31, 1905.

This application, by the Erie Railroad Company, under section 60 of the Railroad Law, was filed with this Board on October 11, 1905. The applicant asks the Board to determine the manner in which an extension of its railroad in the city of Binghamton shall cross State street in said city. A public hearing in this matter, after notice as required by the statute, was held by Commissioner Dunn (by delegation of the Board) in Binghamton on October 28, 1905. Lyon & Painter appeared for the applicant; no one else appeared.

After consideration of this matter, this Board hereby determines, under section 60 of the Railroad Law, that the extension of the Erie railroad in the city of Binghamton shall cross State street in said city above the grade of said State street. (Grade Crossing Case No. 562.)

This overcrossing has been constructed.

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LIX.

IN THE MATTER OF THE APPLICATION OF THE BROOKLYN UNION ELEVATED RAILROAD COMPANY (LEASED TO AND OPERATED BY THE BROOKLYN HEIGHTS RAILROAD COMPANY) UNDER SECTION 68 AS TO AN EXISTING CROSSING AT GRADE OF SAID COMPANY'S RAILROAD (OLD SEA VIEW ELEVATED RAILROAD) AND THE CONEY ISLAND AND BROOKLYN RAILROAD (STREET SURFACE).

November 10, 1905.

After one hearing this matter was closed, the applicant not having proceeded further. It may be reopened upon application by the applicant. (Case No. 3332.)

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LX.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, DUNKIRK AND WESTERN RAILROAD (STREET SURFACE, ELECTRIC,) FOR A DETERMINATION AS TO WHETHER ITS RAILROAD SHOULD CROSS THE WESTERN NEW YORK AND PENNSYLVANIA RAILWAY (STEAM—LEASED TO AND OPERATED BY THE PENNSYLVANIA RAILROAD COMPANY) ABOVE, BELOW OR AT THE GRADE OF THE STEAM RAILROAD (IT BEING PROPOSED THAT THE CROSSING SHOULD BE MADE ABOVE GRADE ON AN EXISTING HIGHWAY BRIDGE), AT A POINT IN THE TOWN OF PORTLAND, CHAUTAUQUA COUNTY, BETWEEN THE VILLAGES OF BROCTON AND PORTLAND.

November 10, 1905.

After hearings, this matter was closed, the applicant not having proceeded further. It may be reopened upon application by the applicant. (Case No. 2992.)

## LXI.

IN THE MATTER OF THE COMPLAINT OF H. P. CROUSE AGAINST THE UTICA AND MOHAWK VALLEY RAILWAY COMPANY (ELECTRIC) AS TO A STREET CROSSING IN WHITESBORO.

November 10, 1905.

This complaint, by H. P. Crouse, against the Utica and Mohawk Valley Railway Company (electric) was filed with this Board on June 5, 1903. It complained that the crossing by said railway of Clinton street in Whitesboro should be protected. This Board recommended to the company that an electric highway crossing warning bell should be installed at the crossing and that a cluster of electric lights should be placed over the crossing. The company installed the electric bell and informed this Board that the village had promised to erect an arc light at the crossing. Subsequently complainant informed this Board that the bell was not in working order, and the company in answer to inquiry informed the Board that two signal companies " \* \* \* have installed at this point their ringing devices but they have not operated consecutively for twenty-four hours. \* \* \* The case was closed. (Case No. 2933.)

## LXII.

IN THE MATTER OF THE ANNULMENT OF THE DETERMINATION OF THIS BOARD, DATED MAY 2, 1901, ON THE PETITION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF AMSTERDAM, UNDER SECTION 62 OF THE RAILROAD LAW, AS TO THE MINAVILLE STREET GRADE CROSSING OF THE WEST SHORE RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) IN SAID CITY.

Determination. November 10, 1905.

On May 2, 1901, this Board determined, under section 62 of the Railroad Law, on the petition of the mayor and common council of the city of Amsterdam, that a grade crossing of the West Shore railroad (leased to and operated by the New York Central and Hudson River Railroad Company) in said city should be changed from grade and the street be carried over the railroad above the grade of the railroad. More than four years have elapsed since said determination. After the determination considerable correspondence was had with the city and the railroad company and hearings before the Board were held, as to the plan for the proposed overcrossing, involving grades on the approaches and the construction of a new canal bridge nearby. This canal bridge has not been constructed. The Board believes that its determination in this matter should be annulled.

This Board, therefore, hereby annuls its determination, under section 62 of the Railroad Law, dated May 2, 1901, in the matter of the petition of the mayor and common council of the city of Amsterdam, as to changing the Minaville street grade crossing of the West Shore railroad (leased to and operated by the New York Central and Hudson River Railroad Company) in said city to an overcrossing of said railroad.

This annulment of said determination does not preclude a new proceeding as to this crossing being begun under the statute in the future. (Grade Crossing Case No. 169.)

See p. 69, 1st vol. 1901 report of this Board.



## LXIII.

IN THE MATTER OF PETITIONS OF THE LONG ISLAND RAILROAD COMPANY UNDER SECTION 62 OF THE RAILROAD LAW AS TO ABOLISHMENT OF CERTAIN GRADE CROSSINGS OF ITS RAILROAD.

November 21, 1905.

During the fall of 1905 this Board held hearings on petitions of the Long Island Railroad Company under section 62 of the Railroad Law as to the abolition of certain grade crossings of its railroad. At these hearings certain of these petitions, as follows, were withdrawn or closed for various reasons. Grade Crossing Cases Nos. 246, 247, 257, 379, 380, 567, 569, 570.

## LXIV.

IN THE MATTER OF THE APPLICATION OF THE TUNESASSA AND BRADFORD RAILROAD COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILROAD SHALL CROSS HIGHWAYS IN THE COUNTY OF CATTARAUGUS.

Determination. November 28, 1905.

This application, by the Tunesassa and Bradford Railroad Company, under section 60 of the Railroad Law, was filed with this Board on October 24, 1905. The applicant asks the Board to determine the manner in which its single track railroad shall cross the following highways in Cattaraugus county, to wit:

*Town of Red House.*

1. The highway known as Quaker Run.

*Town of Elko.*

2. The highway known as Quaker Run, at three points.
3. The highway known as the State road.

A public hearing in this matter, after notice as required by the statute, was held by this Board in the city of Albany on November 10, 1905. Cary, Rumsey and Hastings appeared for the applicant; no one else appeared. Another hearing in the matter was held in Elmira on November 28, 1905, at which Cary, Rumsey and Hastings appeared for the applicant. An inspection of and report as to these proposed crossings was made by the superintendent of the grade crossing bureau in this department.

After consideration of the evidence, this Board hereby determines, under section 60 of the Railroad Law, that it would be impracticable for the single track railroad of the Tunesassa and Bradford Railroad Company to cross otherwise than at grade the highways hereinafter named and this Board, therefore, hereby determines that said crossings by said railroad of said highways shall be at grade as hereinafter set forth, the points of crossings to be as shown on an amended map and profile of the route of said company's railroad filed with this Board at Elmira on November 28, 1905.

*Town of Red House.*

1. At grade the highway known as Quaker Run.

*Town of Elko.*

2. At grade the highway known as Quaker Run, at three points.
3. At grade the highway known as the State road. (Grade Crossing Case No. 566.)

At the time of writing this report these crossings are under construction.

## LXV.

IN THE MATTER OF THE APPLICATION, UNDER SECTION 68 OF THE RAILROAD LAW, OF THE UNION RAILWAY COMPANY OF NEW YORK CITY, AS TO ITS DOUBLE TRACK ELECTRIC RAILWAY CROSSING THE SINGLE TRACK OF THE PORT MORRIS BRANCH OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD ON ST. ANN'S AVENUE JUST NORTH OF ONE HUNDRED AND FORTY-NINTH STREET, BOROUGH OF THE BRONX, NEW YORK CITY.

November 28, 1904.

A determination in the matter will be found on page 190, first volume, report of this Board for 1903. The determination was that the crossing in question should be at grade and be protected by a flagman to be employed by the Union Railway Company. At the time of writing this report the crossing has not been constructed, but the steam railroad is being changed from grade to a subway at this point and the street railroad crossing when made will be on the avenue above the steam railroad. (Case No. 2920.)

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## LXVI.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ALLEGANY.

November 28, 1905.

See page 121, first volume, 1904 report of this Board. At the time of writing this report these crossings are under construction, but not yet completed. See Nos. VII and VIII in this volume under this title. (Grade Crossing Case No. 479.)

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## LXVII.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF WYOMING.

November 28, 1905.

See page 124, first volume 1904 report of this Board. At the time of writing this report these crossings are under construction but not yet completed. (Grade Crossing Case No. 480.)

## LXVIII.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF ERIE.

November 28, 1905.

See page 126, first volume 1904 report of this Board. At the time of writing this report these crossings are under construction but not yet completed. See Nos. XX, XXI, XXII in this volume under this title. (Grade Crossing Case No. 478.)

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## LXIX.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILWAY SHALL CROSS STREETS, AVENUES AND HIGHWAYS IN THE COUNTY OF CATTARAUGUS.

November 28, 1905.

See page 128, first volume 1904 report of this Board. At the time of writing this report these crossings are under construction but not yet completed. See Nos. XIX, XX in this volume under this title. (Grade Crossing Case No. 481.)

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## LXX.

IN THE MATTER OF A CROSSING AT GRADE OF THE TARRYTOWN, WHITE PLAINS AND MAMARONECK RAILWAY AND THE NEW YORK AND HARLEM RAILROAD (LEASED TO AND OPERATED BY THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY) ON RAILROAD AVENUE IN WHITE PLAINS.

November 28, 1904.

At page 718, first volume report of this Board for 1900, will be found a report of the electrical expert of the Board as to grade crossings of the Tarrytown, White Plains and Mamaroneck railway and steam railroads in White Plains and a statement of the action taken by the Board in the matter. Under date of July 28, 1904, the electrical expert of the Board made another report in this matter as to this crossing, and the Board directed that the Tarrytown, White Plains and Mamaroneck railway should, at its own expense, install a derailing switch in its track on each side of this crossing, said derailing switch to be interlocked with home and distant signals on the steam railroad. At the time of writing this report these switches and signals have not yet been installed. A metal trough has been constructed on the trolley wire. (See p. 530, 1st vol., report of 1903, and p. 138, report of 1904.) The matter of changing this highway crossing from grade to an undercrossing of the steam railroad is pending before this Board. (Case No. 2229.)

**LXXI.**

IN THE MATTER OF THE APPLICATION OF THE OLEAN STREET RAILWAY COMPANY FOR A CROSSING OF THE PITTSBURG, SHAWMUT AND NORTHERN RAILROAD IN THE UNDERGROUND CROSSING AT CASE'S IN THE TOWN OF GENESEE, ALLEGANY COUNTY, NEW YORK.

November 28, 1905.

See page 148, report of this Board for 1904. The street railway is now constructed and operating in said undercrossing. (Case No. 2784.)

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**LXXII.**

IN THE MATTER OF THE APPLICATION OF THE WARREN AND JAMESTOWN STREET RAILWAY COMPANY, UNDER SECTION 68 OF THE RAILROAD LAW, FOR A DETERMINATION AS TO WHETHER ITS SINGLE TRACK ELECTRIC RAILWAY SHALL CROSS THE DUNKIRK, ALLEGANY VALLEY AND PITTSBURG RAILROAD (STEAM—OPERATED BY THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY), ABOVE, BELOW OR AT THE GRADE OF SAID STEAM RAILROAD.

November 28, 1905.

See page 151, first volume, report of this Board for 1904. The determination was that street railway should cross the steam railroad in an undercrossing. At the time of writing this report this undercrossing has been constructed. (Case No. 3346.)

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**LXXIII.**

IN THE MATTER OF THE APPLICATION OF THE PUBLIC IMPROVEMENT COMMISSION OF THE CITY OF COHOES FOR A DETERMINATION AS TO THE MANNER IN WHICH HIGH STREET, IN SAID CITY, SHALL BE CARRIED ACROSS THE TRACKS OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

November 28, 1905.

See page 53, first volume report of this Board for 1900. The determination was that the street railway should cross the steam railroad at an undercrossing was constructed and is in use. (Grade Crossing Case No. 154.)

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**LXXIV.**

IN THE MATTER OF THE APPLICATION OF THE CITY OF NEW ROCHELLE, UNDER SECTION 61 OF THE RAILROAD LAW.

See page 153, first volume, report of this Board for 1904. The determination was that two undercrossings and an overcrossing of the New York, New Haven and Hartford railroad should be constructed. The undercrossings and overcrossing have been constructed, but at the time of writing this report the work has not yet been approved by this Board. (Grade Crossing Case No. 332.)

**LXXV.**

IN THE MATTER OF THREE APPLICATIONS OF THE NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, AS TO A SECOND TRACK ON ITS RAILWAY CROSSING STREETS, AVENUES AND HIGHWAYS.

November 28, 1905.

The determinations in these matters will be found at pages 201, 202 and 209, first volume, report of this Board for 1903. The construction of the second track at the crossings in question is progressing. (Grade Crossing Cases Nos. 446, 447 and 445.)

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**LXXVI.**

IN THE MATTER OF THE APPLICATION OF THE UTICA AND MOHAWK VALLEY RAILWAY COMPANY (STREET SURFACE, ELECTRIC,) UNDER SECTION 68 OF THE RAILROAD LAW, AS TO THE CONSTRUCTION OF A SECOND TRACK OF ITS RAILWAY ACROSS THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD (STEAM), IN GENESEE STREET IN THE TOWN OF NEW HARTFORD, ONEIDA COUNTY.

December 5, 1904.

The determination in this matter will be found at page 206, first volume, report of this Board for 1903. At the time of writing this report the second track has not been constructed at this crossing.

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**LXXVII.**

APPLICATION OF THE LOWVILLE AND BEAVER RIVER RAILROAD COMPANY, UNDER SECTION 60 OF THE RAILROAD LAW, FOR A DETERMINATION OF THE MANNER IN WHICH ITS SINGLE TRACK RAILROAD SHALL CROSS HIGHWAYS IN THE COUNTY OF LEWIS.

November 28, 1905.

See page 139, first volume, report of this Board for 1904. The construction of the crossings in question is completed. (Grade Crossing Case No. 492.)

# Decisions of Courts as to Questions Arising Under the Grade Crossing Law.

## I.

### COURT OF APPEALS.

ALBERT T. SMITH, as Trustee, Appellant, v. BOSTON AND ALBANY RAILROAD COMPANY et al., Defendants, and THE TOWN OF KINDERHOOK, Respondent.

181 N. Y. 132; 99 App. Div. 94, affirmed.

APPEAL, by permission, from an order of the Appellate Division of the Supreme Court in the third judicial department, entered November 22, 1904, which reversed an interlocutory judgment of Special Term overruling a demurrer to the complaint and sustained such demurrer.

The following question was certified: "Does the complaint of the plaintiff state a cause of action against the defendant, The Town of Kinderhook?"

The nature of the action and the facts, so far as material, are stated in the opinion.

O'BRIEN, J. The defendants in this action severally demurred to the complaint on the ground that it did not state facts sufficient to constitute a cause of action. The demurrer of the two railroads, defendants, was sustained at the Special Term, but the demurrer interposed by the town of Kinderhook was overruled. The plaintiff took no appeal from the decision of the Special Term sustaining the demurrers of the two railroads, and, therefore, these two defendants have, for all practical purposes, dropped out of the case. The defendant, the Town of Kinderhook, did appeal from the decision of the Special Term overruling its demurrer and on appeal the decision was reversed and the plaintiff comes here.

In this situation it is obvious that the only question presented by the appeal is, whether the said complaint on its fact states a good cause of action against the town of Kinderhook for the damages alleged to have been sustained by the plaintiff, resulting from the change of grade in the highway in front of his property. There is no doubt that the allegations of the plaintiff are sufficient to show that the plaintiff's property has been damaged by the changes made in the highway. The only question is whether the plaintiff states a case of liability for such damages on the part of the town. It is, therefore, important to get a clear view of the facts stated in the complaint as the ground of the liability of the town to the plaintiff for his damages.

The averments of the complaint on that point are substantially as follows:

(1) That prior to the first day of January, 1903, an order was granted by the railroad commissioners of the State of New York authorizing, empowering and directing the defendants to purchase land described in such order and directing such defendants to make an underground crossing under the Boston and Albany railroad, which is leased and managed by the defendant, the New York Central and Hudson River Railroad Company, at the point where the Boston and Albany railroad crosses Chatham street, Niverville, town of Kinderhook aforesaid.

(2) That such order was affirmed by the Court of Appeals prior to January, 1903.

(3) That the proceeding taken as aforesaid was commenced by the defendants, railroad companies, and it was defended by the defendant the Town of Kinderhook.

It is nowhere alleged that the order above described directed the defendants to purchase any lands of the plaintiff, and it is nowhere alleged that they took any such lands outside of the limits of the highway. There is a general allegation in the complaint charging the defendants with having destroyed the highway in front of the plaintiff's premises, but that is obviously not a fact, but a conclusion. All it means or can mean is that, in the process of changing the crossing to an underground crossing, the highway in front of the plaintiff's premises was depressed below the original level to the extent of ten feet. Whether a highway has been destroyed by changes in the surface, either by elevating or depressing the road as it originally existed, is, at best, only a conclusion from the actual facts. There certainly were changes made in the highway, and when such changes are stated in detail the pleader does not strengthen his cause of action by adding to the facts the conclusions of his own mind that the highway was destroyed.

It is quite obvious that there must be some flaw in the reasoning process that would make the town of Kinderhook liable to the plaintiff in damages for the changes made in the highway which the town never wanted, never asked for, and which it opposed and resisted to the end, which came when this court affirmed the order directing the overhead crossing of the railroad to be changed to an underground crossing. Before we can accept the proposition that the town is liable for damages, under such circumstances, it should be made so clear upon principles of law, or natural justice, as to be irresistible.

It is settled law in this State that the owner of property abutting upon a highway which is graded or changed by the public authorities has no right of action against

the town or municipality unless such right is given by some express statute. At common law there is no such liability. It is unnecessary to cite authorities to support such a plain proposition. No one can doubt that such is the law of this State. It is quite sufficient to refer to one case just decided by this court (*Sauer v. City of New York*, 180 N. Y. 27). It was held in that case that where the original street was elevated upon columns fifty feet above the original surface that it was a change in the grade of the streets within the meaning of the principle just referred to. In that case the property owners upon the line of the street, as originally laid out and used for many years, suffered damages since the highway was elevated fifty feet above the original surface, and yet in that case we held that they could not recover and that the damage concededly sustained was *damnum absque injuria*. Now, if that is so in a case where the road is elevated fifty feet, why does not the same principle apply when it is depressed ten feet? In the case just cited the law, as it exists in this State, was examined and restated, and I am utterly unable to see what distinction there can be in principle between that case and the one at bar.

The case of *Reining v. N. Y., L. & W. Ry. Co.*, 128 N. Y. 157, is cited as an authority in favor of the plaintiff's contention that the town of Kinderhook is liable for the plaintiff's damages. That case is often cited in cases of this character, and frequently misinterpreted and misunderstood. It was also cited and relied upon in the *Sauer* case, but just how it can be held to apply in a case of that kind it is difficult to perceive. In the first place the action was not against the municipality at all but against a railroad that sought to shield itself from liability under cover of municipal action, and what was decided in the case was that a municipality had no power to change the grade of a street for the benefit of a railroad; that is to say, for the benefit of a private corporation. It had the undoubted right to make the change for the benefit of the public but not for any other purpose, and having made the change in order to accommodate a railroad the railroad was liable for damages to the abutting property owners. The language of Judge Andrews, in giving the opinion of the court in that case, points out very clearly the principle upon which the case was decided: "We are not called upon to say whether there is any limit to the exercise of municipal authority or that the city cannot, in exercising the power to establish and alter the grade of streets, raise an embankment in a part of a street if, in its judgment, this will promote the public convenience and the purposes of the street as a highway. But we think it cannot, under the guise of exercising this power, appropriate a part of a street to the exclusive, or practically to the exclusive use of a railroad company, or so as to cut off abutting owners from the use of any part of the street in the accustomed way, without making compensation for the injury sustained. We have held that the authority conferred by the General Railroad Law upon railroad companies to cross highways in the construction of their lines, authorizes their construction on, over or below the grade of the highway crossed, and that incidental changes of the grade of the street rendered necessary to accommodate railroad crossings, give no right of action to abutting owners who may sustain injury. \* \* \* The conclusion we have reached, that the action of the city in granting permission to the defendant to construct an embankment in Water street, was not a change of grade in the street within the charter provisions, disposes of this question. The charter provision was intended to afford a remedy for damages from changes of grade where none existed before, and to cases to which it applies, the remedy is necessarily exclusive."

If the town of Kinderhook had permitted the railroads to make the changes, which the plaintiff complains of, for their own benefit and accommodation and not for the benefit of the public, much reasoning could be found in the *Reining* case to sustain the plaintiff's contention; but since the town of Kinderhook did not authorize the things to be done which the plaintiff complains of, but, on the contrary, resisted it to the end, it is difficult to see how the *Reining* case can be wrested from the true theory upon which it was decided to create a liability against the town. That all the things stated in the complaint causing the injuries to the plaintiff's property were merely acts in the process of changing the grade of the highway is beyond all question. Everything that was done of which the plaintiff complains was either permitted or commanded by statute. The law under which the change was made is a law authorizing or requiring changes of grade, and the acts complained of are acts required or permitted by the law under which the changes were made, and to say that it is not a change of grade at all, but something else, is to assert that what was done was outside of the statute and not within its scope and purpose.

Finally, it is said that section sixty-three of the Railroad Law imposes a liability upon the town for the plaintiff's damages. The language of that statute is not very clear to me. It does permit, under certain conditions, the purchase or acquiring of lands, easements or rights necessary for the purpose prescribed in the statute, since it might happen that in order to make the change more land might be required either to widen or to straighten the street. It seems that the railroad commissioners thought that something of that kind was necessary, since the complaint states that their order directed the purchase of lands. Whatever that section means it cannot help the plaintiff to overcome the demurrer in this case. If this section of the statute does create any new rights in the plaintiff, or declare any new liability on the part of the town it is sufficient to say that the remedy of the plaintiff is not in this action against the town. Whether there is any other remedy to compel the defendants to provide, in some way, for the payment of his damages is a question not here before us, and I prefer to wait until it is. Certainly, it cannot be held in this case that the town must respond for the plaintiff's damages while the two railroads that instituted the proceedings and in whose behalf they were conducted shall go free. If there is any liability at all for the change in the grade of a street of which the plaintiff complains, it would seem to be a liability that should, at least, be shared by the railroads. But all that we now decide or can decide is that there are no facts stated in the complaint that create any liability of the town in question to the plaintiff.

for his damages. That is the only question now before us. It follows that the judgment appealed from should be affirmed, with costs, and the question certified answered in the negative.

HAIGHT, J. The question certified to this court is, "Does the complaint of the plaintiff state a cause of action against the defendant, The Town of Kinderhook?" The plaintiff, in substance, alleges that the railroad commissioners of the State of New York had made an order "authorizing, empowering and directing the defendants to purchase land described in such order and directing such defendants to make an underground crossing under the Boston and Albany railroad, which is leased and managed by the defendant New York Central and Hudson River Railroad Company where the Boston and Albany railroad crosses Chatham street, Niverville, town of Kinderhook aforesaid, and such order required the destruction and removal of the highway in front of plaintiff's manufacturing plant at Niverville aforesaid, upon the payment by the defendants of the value therefor." The complaint further alleges that the plaintiff is the owner, as trustee, of a tract of land upon which there is a large brick manufactory of the value of nine thousand dollars, in the town of Kinderhook, situated upon Chatham street, contiguous to the Boston and Albany railroad, that the defendants removed and destroyed such highway in front of the plaintiff's manufactory, as aforesaid, and have dug out and removed the highway to the depth of ten feet below the plaintiff's buildings, thus destroying his means of ingress and egress to and from such street, and that he has suffered damages by reason of such acts in the sum of five thousand dollars, for which he demands judgment.

The demurrer interposed by the railroad companies was sustained by the trial court, and no appeal has been taken therefrom, so that the only question brought up for review in this court is as to whether the complaint states a cause of action against the town of Kinderhook. It is apparent from the allegations of the complaint that the highway in front of the plaintiff's premises has been lowered a distance of about ten feet, so as to pass under the railroad crossing at that point, and that the change made in the highway operated to deprive the plaintiff of his easement of access thereto. Assuming this to be so, the question arises as to whether he can recover damages therefor in this action. The right of an abutting owner to ingress and egress to and from his premises to the highway is a continuing easement running with the land, which may be acquired for a public use when necessary. At common law the damages to the easements of an abutting owner, made by a change of grade in a public highway for the convenience and safety of the public traveling thereon, in the absence of legislative enactment providing a remedy, are *damnum absque injuria* and no right of action exists therefor. But if such remedy is given by statute where none exists at common law, it becomes exclusive and must be followed by those seeking relief. (*Brewster v. Rogers Co.*, 169 N. Y. 73, 80; *Sauer v. City of New York*, 180 N. Y. 27, and authorities there cited.) It, therefore, becomes important to determine what, if any, remedy has been given by statute.

Under the Railroad Law, being chapter 565 of the Laws of 1890, as amended from time to time, we have an elaborate system provided for the crossing of highways by railroads. Section sixty relates to steam railroads thereafter constructed across highways. Section sixty-one provides for the laying out of new streets or highways over existing railroads, and section sixty-two provides that, upon the application of the mayor and common council of a city, the president and trustees of a village, or the town board of a town within which a highway crosses a steam railroad at grade, the Board of Railroad Commissioners may, upon the notice prescribed by the statute to all the parties interested, including the owners of lands adjoining such crossing, change the grade, in case the public safety so requires, so as to provide an under or an over crossing, or the discontinuance of a highway and for the providing of a new highway crossing the railroad at another place and determine specifically the manner in which the same shall be made. By section sixty-five it is provided that where a crossing is made under section sixty of the act by a new railroad it shall pay all the expenses thereof; where it is made under section sixty-one, the railroad company shall pay one-half of the expenses and the municipality the other half, and where the crossing is changed under section sixty-two, the railroad company is required to pay one-half, the municipality one-quarter and the State the other quarter of the expenses. Where the crossing is changed under section sixty-two, all of the work shall be done by the railroad corporation subject to the supervision and approval of the Board of Railroad Commissioners, and the railroad company is required to pay the expenses of such work in the first instance and where lands, easements or rights are necessary to be acquired in carrying out such work the amount required to be paid therefor shall be primarily paid by the municipal corporation, but no claim for damages to property on account of the change or abolishment of any crossing under the provisions of the act shall be allowed unless notice of such claim is filed with the Board of Railroad Commissioners within six months after the completion of the work necessary for such change. After the completion of the improvement and the work is approved by the Railroad Commissioners an accounting is required to be had as to the amount of costs incurred in the construction of the improvement and in the acquiring of the necessary lands, easements and rights therefor and the expenses divided between the railroad company, the municipality and the State in the proportions specified, the Railroad Commissioners drawing upon the Treasurer of the State for the amount that the State is required to pay. Section sixty-six gives authority to the Railroad Commissioners to institute proceedings on their own motion for a change of crossing when, in their opinion, the public safety and interests so require. And section sixty-seven requires the railroad corporations and the municipalities or the person or persons, to whom the decision of the Railroad Commissioners is directed, to comply with the decision and in case of their failure they may be compelled by the Attorney-General so to do. The Supreme Court is given the power in all cases to compel compliance with the decision by mandamus.



Section sixty-three provides as follows: "The municipal corporation in which the highway crossing is located, may, with the approval of the railroad company, acquire by purchase any lands, rights or easements necessary or required for the purpose of carrying out the provisions of sections sixty, sixty-one and sixty-two of this act, but if unable to do so shall acquire such lands, rights or easements by condemnation, either under the Condemnation Law, or under the provisions of the charter of such municipal corporation. The railroad company shall have notice of any such proceedings and the right to be heard therein."

We thus have the general scheme of the statute disclosed. The Railroad Commissioners are given the power to do away with grade crossings when the safety of the public so requires, and to specify the manner in which the crossing shall be constructed, but in doing this the owners of lands adjoining the crossing must have notice and an opportunity to be heard and their rights considered; but in any claim that they may make for damages notice thereof must be filed with the Board of Railroad Commissioners within the time specified, to which attention has been called. The provisions of section sixty-three, which we have quoted, provide for the acquiring by purchase of any lands, rights or easements necessary or required for the purpose of carrying out the contemplated improvement. If the improvement is of such a character as to necessitate the destruction of the easements of abutting owners of access it is apparently one of the rights contemplated by the statute, for which the abutting owners have been given a hearing. The municipal corporation can acquire these rights or easements by agreement with the parties only upon the consent of the railroad company. The railroad company, being required to pay one-half of the expenses of acquiring such rights or easements, has the right to become a party to such agreement, and if such company does not consent thereto the agreement cannot be made. But if the parties are unable to agree, then the provision of the statute is that such rights or easements *shall* be acquired by condemnation, either under the Condemnation Law or under the provisions of the charter of the municipal corporation; but in that case the railroad company is required to have notice of such proceedings, to the end that the company may appear and be heard upon the question of damages. We, therefore, conclude that under a fair and reasonable construction of the statute the Legislature contemplated the acquiring of easements which would necessarily be destroyed by the construction of the improvement; but, as will be seen, they must be acquired in the manner pointed out by the statute, and that is by the agreement of the parties, or, in case they are unable to agree, by proceedings to condemn either under the Condemnation Law or under the provisions of the charter of the municipality. In that way the rights of the railroad company, of the town and the State can be protected, as well as that of abutting owners who have their easements impaired. (*Matter of Torge v. Vil. of Salamanca*, 176 N. Y. 324.) When the easement is acquired by agreement or by condemnation it is acquired for all time, or so long as the improvement in the highway remains unchanged. This can not be accomplished under the complaint in this action. The remedy is one provided by statute, which did not exist at common law, and, therefore, under the authorities becomes exclusive. It may be claimed that the right of instituting the condemnation proceedings rests in the town, and that the town in this case refuses to institute such proceedings; if so, the plaintiff has his remedy through the writ of mandamus to compel the town board to take the necessary steps to acquire any easements that have been taken from him. Our conclusion, therefore, is that the complaint does not state facts constituting a cause of action, and that the judgment of the Appellate Division should be affirmed, with costs, and the question certified answered in the negative.

CULLINAN, Ch. J. I concur in the views of Judges O'Brien and Haight, that the act of the defendant, the town of Kinderhook, of which the plaintiff complains, was a change of the grade of the highway, and, therefore, under the settled law of this State gave the plaintiff no cause of action. I do not think that the question of the defendant's liability is in any way affected by the fact that the change of grade was the result of proceedings instituted by the railroad company before the Railroad Commissioners, an application which the town resisted. The Legislature could direct the town, even against its will, to change the crossing of the railroad over the highway, and if in effecting such change any property rights were invaded or injured the Legislature could require the town to make compensation. Whether, under section 63 of the Railroad Law, an abutter is entitled to compensation for the injuries sustained by a change of grade, as held by Judge Haight, I think it unnecessary to now determine, though it must be conceded that such a construction of the section is in harmony with the present policy of the State, which, through legislation, has provided for indemnity to an abutter for the change made by the voluntary act of the municipal authorities.

CULLINAN, Ch. J. and WERNER, J., concur in result, in memorandum with O'BRIEN and HAIGHT, JJ.; GRAY, J., concurs with O'BRIEN, J.; BARTLETT and VANN, JJ., concur with HAIGHT, J.

Judgment affirmed, with costs, and question certified answered in the negative.

## Highway Crossing Signs on Railroads.

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Applications under section 33 of the Railroad Law, as amended by chapter 301  
Laws of 1901.

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### I.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND SUSQUEHANNA  
RAILWAY COMPANY UNDER SECTION 33 OF THE RAILROAD LAW AS TO HIGHWAY  
CROSSING SIGNS TO BE USED ON ITS RAILWAY BETWEEN WELLSVILLE AND  
BUFFALO.

Determination. July 6, 1905.

This application, by the Buffalo and Susquehanna railway, under section 33 of the Railroad Law, as to highway crossing signs was filed with this Board on June 16, 1905. It asks the Board to approve of a form of highway crossing sign-board to be erected at points where said company's railway proposes to cross public highways at grade. Attached to the application is a blue print plan of the sign-board approval of which is asked.

This Board believes that the form of highway crossing sign shown by the blue print attached to the application is a proper one to be maintained at such crossings. This Board, therefore, hereby approves, under section 33 of the Railroad Law, the shape and design of a highway crossing sign-board (shown by a blue print plan thereof attached to the application in this matter on file in this office), to be established and maintained by the Buffalo and Susquehanna Railway Company at highway grade crossings of its railway between Wellsville and Buffalo.

This Board also, under section 33 of the Railroad Law, hereby prescribes that said sign-boards shall be severally located at said crossings so as to be readily seen by persons on the highway approaching the crossings and that the elevation of such sign-boards and the words of warning thereon shall be as shown by said blue print plan of said sign-board attached to the application in this matter on file in this office. (Grade Crossing Case No. 3363.)

# Applications as to Motive Power on Street surface Railroads.

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## I.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CITY INTERBOROUGH RAILWAY COMPANY, UNDER SECTION 100 OF THE RAILROAD LAW, FOR APPROVAL OF MOTIVE POWER.

Determination. March 23, 1905.

Application, under section 100 of the Railroad Law, having been made to this Board on March 18, 1905, by the New York City Interborough Railway Company, a street surface railroad, for the approval of this Board of the operation by the overhead single electrical trolley system of motive power of its railroad on the following streets, avenues, roads and highways, to wit:

First.—Commencing at a point on the One Hundred and Fifty-fifth street viaduct, between Bradhurst and Eighth avenues and on a line parallel with the westerly line of the Manhattan Elevated Railway Company's station at Eighth avenue and One Hundred and Fifty-fifth street; running thence easterly and along said viaduct to the Central or Macomb's dam bridge; thence running northerly upon and along said bridge to the westerly approach thereof known as the Sedgwick avenue approach, formerly called Ogden avenue approach thereof in the borough of the Bronx; thence northerly on and along said approach to its intersection with Jerome avenue; thence northeasterly on and along Jerome avenue to its intersection with Ogden avenue; thence on and along Ogden avenue northerly to its intersection with East One Hundred and Sixty-first street; thence westerly on and along East One Hundred and Sixty-first street to its intersection with Summit avenue; thence northerly on and along Summit avenue to its intersection with East One Hundred and Sixty-sixth street; thence westerly on and along East One Hundred and Sixty-sixth street to its intersection with Lind avenue; thence northerly on and along Lind avenue as it winds and turns to Aqueduct avenue; thence northeasterly on and along Aqueduct avenue to Kingsbridge road; thence easterly on and along Kingsbridge road to Reservoir avenue; thence northerly on and along Reservoir avenue to Sedgwick avenue; thence northeasterly on and along Sedgwick avenue to Perot street; thence northwesterly on and along Perot street to Nathalie or Boston avenue; thence northeasterly on and along Nathalie or Boston avenue to Heath avenue or Fort Independence street; thence westerly on and along Heath avenue or Fort Independence street to Fort Independence street; thence northerly on and along Fort Independence street to Bailey avenue; thence northerly on and along Bailey avenue to East Two Hundred and Thirty-eighth street; thence northwesterly on and along East and West Two Hundred and Thirty-eighth street to Corlear street or avenue.

The said route as it winds and turns crossing the following highways, avenues, streets, public places, etc.:

The viaduct in West One Hundred and Fifty-fifth street, as above-described in the borough of Manhattan; Sedgwick avenue, Exterior street, East One Hundred and Sixty-second street, East One Hundred and Sixty-fourth street, East One Hundred and Sixty-fifth street, Union place, East One Hundred and Sixty-seventh street, East One Hundred and Sixty-eighth street, East One Hundred and Sixty-ninth street, East One Hundred and Seventieth street, Merriam avenue, Ogden avenue, Undercliff place, Boscobel avenue, Featherbed lane, Montgomery avenue, Andrews avenue, East One Hundred and Seventy-sixth street, Macomb's road, Tremont avenue, East One Hundred and Seventy-

seventh street, Burnside avenue, East One Hundred and Eightieth street, East One Hundred and Eighty-first street, East One Hundred and Eighty-third street, Fordham road, East One Hundred and Eighty-eighth street, East One Hundred and Ninetieth street, East One Hundred and Ninety-second street, Giles place, Heath avenue, Albany road, Putnam avenue, East, Putnam avenue, West, Review place, Broadway, Kingsbridge avenue, all in the borough of the Bronx, and such other highways, parkways, bridges, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

Second.—Commencing at the rapid transit station, at the intersection of West One Hundred and Eighty-first street with Broadway (formerly Boulevard), in the borough of Manhattan thence on and along said West One Hundred and Eighty-first street in an easterly direction to Washington bridge; thence along and over Washington bridge easterly to Aqueduct avenue, borough of the Bronx; thence northeasterly on and along Aqueduct avenue to Tremont avenue; thence easterly on and along Tremont avenue as it winds and turns to the Transverse road under the Grand boulevard and concourse connecting said Tremont avenue; thence southerly on and along the Transverse road under the Grand boulevard and concourse again to Tremont avenue; thence easterly on and along Tremont avenue to Ryer avenue; thence northerly on and along Ryer avenue to East One Hundred and Eightieth street; thence southeasterly on and along East One Hundred and Eightieth street to Webster avenue; thence northerly on and along Webster avenue again to East One Hundred and Eightieth street; thence easterly on and along said East One Hundred and Eightieth street to Southern boulevard; thence northerly on Southern boulevard to East One Hundred and Eighty-second street.

The said route as it winds and turns crossing the following highways, avenues, streets, public places, etc.:

Audubon avenue, Amsterdam avenue, both in the borough of Manhattan; Montgomery avenue, Featherbed lane, Andrews avenue, East One Hundred and Seventy-sixth street, Macomb's road, Harrison avenue, Grand avenue, East One Hundred and Seventy-seventh street, Davidson avenue, Jerome avenue, Walton avenue, Morris avenue, Creston avenue, Monroe avenue, Anthony avenue, Buckhout street, East One Hundred and Seventy-eighth street, Burnside avenue, Valentine avenue, Tiebout avenue, Park avenue, west, Park avenue, East, Washington avenue, Bathgate avenue, Third avenue, Monterey avenue, Lafontaine avenue, Arthur avenue, Hughes avenue, Belmont avenue, Crotona avenue, Clinton avenue, Prospect avenue, Mapes avenue, East One Hundred and Eighty-first street, all in the borough of the Bronx, and such other highways, parkways, bridges, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

Third.—Commencing at the rapid transit station, at the intersection of Bailey avenue and East Two Hundred and Thirtieth street, in borough of the Bronx, running thence easterly on and along said East Two Hundred and Thirtieth street to its intersection with Heath avenue; thence southerly on and along Heath avenue to its intersection with Kingsbridge road; thence southeasterly on and along Kingsbridge road as the same winds and turns to its intersection with the Transverse road under the Grand boulevard and concourse connecting said Kingsbridge road; thence easterly on and along said Transverse road again to Kingsbridge road; thence southerly and easterly on and along Kingsbridge road to its intersection with Third and Pelham avenues; thence on and along Third avenue southerly to East One Hundred and Eighty-ninth street; thence southeasterly on and along East One Hundred and Eighty-ninth street to Beaumont avenue; thence northeasterly on and along Beaumont avenue again to East One Hundred and Eighty-ninth street; thence easterly on and along East One Hundred and Eighty-ninth street to Southern boulevard; thence southerly on and along Southern boulevard to East One Hundred and Eighty-second street; thence southeasterly on and along said East One Hundred and Eighty-second street to Vyse avenue; thence southwesterly on and along Vyse avenue to East One Hundred and

Seventy-eighth street; thence southeasterly on and along said East One Hundred and Seventy-eighth street to Boston road; thence southwesterly on and along Boston road to East One Hundred and Seventy-seventh street; thence easterly on and along said East One Hundred and Seventy-seventh street to and across the Eastern boulevard again to East One Hundred and Seventy-seventh street; thence easterly on and along East One Hundred and Seventy-seventh street to and ending at Locust Point on Long Island Sound, with a branch line commencing at Decatur avenue and Kingsbridge road; thence running northeasterly on and along Decatur avenue to its intersection with Mosholu parkway.

The said route as it winds and turns crossing the following highways, avenues, streets, public places, etc.:

All in the borough of the Bronx: East Two Hundred and Twenty-ninth street, Emmerich place, Nathalie avenue, Sedgwick avenue, Tee Taw avenue, Aqueduct avenue, Reservoir avenue, Grand avenue, Davidson avenue, Jerome avenue, Morris avenue, Creston avenue, East One Hundred and Ninety-second street, Valentine avenue, Fordham road, Bainbridge avenue, Marion avenue, Decatur avenue, Webster avenue, Vanderbilt avenue, West, Vanderbilt avenue, East, Pelham avenue, Washington avenue, Lorillard place, Hoffman street, Arthur avenue, Hughes avenue, Belmont avenues, Cambreling avenue, Crotona avenue, Prospect avenue, East One Hundred and Eighty-seventh street, East One Hundred and Eighty-fifth street, East One Hundred and Eighty-third street, Grote street, Garden street, Crotona parkway, Mohegan avenue, Hunnewell avenue, Daly avenue, East One Hundred and Eighty-first street, East One Hundred and Eightieth street, East One Hundred and Seventy-ninth street, Bryant street, West Farms road, Rosedale avenue, Commonwealth avenue, Tacoma street, Cornell place, Lawrence avenue, Eaton street, Classon Point road, Harrison avenue, Theriot street, Saxe avenue, Cottage avenue, McGraw avenue, Avenue E, Gode avenue, Virginia avenue, Westchester turnpike, Fourteenth street, Thirteenth street, Twelfth street, Eleventh street, Tenth street, Ninth street, Eighth street, Seventh street, Avenue D, Avenue C, Avenue B, Avenue A, Eastern boulevard, Penfield avenue, borough of the Bronx, and such other highways, parkways, bridges, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

The branch line of the above route crossing the following named highways, avenues, streets, public places, etc., in borough of the Bronx:

East One Hundred and Ninety-third street, East One Hundred and Ninety-fourth street, East One Hundred and Ninety-fifth street, East One Hundred and Ninety-seventh street, East One Hundred and Ninety-eighth street, Oliver place, East One Hundred and Ninety-ninth street, East Two Hundredth street, East Two Hundred and First street, and such other highways, parkways, bridges, viaducts, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

Fourth.—Commencing at the intersection of Jerome avenue and East Two Hundredth street in the borough of the Bronx, running thence southeasterly along East Two Hundredth street to the Transverse road under Grand boulevard and concourse connecting said East Two Hundredth street; thence southeasterly, along said Transverse road again to East Two Hundredth street; thence southeasterly along said East Two Hundredth street to Webster avenue; thence across Webster avenue at said East Two Hundredth street to Southern boulevard, in the borough of the Bronx.

The said route as it winds and turns crossing the following highways, avenues, streets, public places, etc.:

Villa avenue, Valentine avenue, Briggs avenue, Bainbridge avenue, Perry avenue, Marion avenue, Decatur avenue, Webster avenue, in borough of the Bronx.

And such other highways, parkways, bridges, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

Sixth.—Commencing at West One Hundred and Forty-fifth street, west of Lenox avenue, borough of Manhattan, running thence easterly on and along said West One Hundred and Forty-fifth street to and over the Lenox avenue bridge, now under construction over the Harlem river, to East One Hundred

and Forty-ninth street, borough of the Bronx; thence in an easterly direction on and along said East One Hundred and Forty-ninth street to Courtlandt avenue; thence northerly on and along Courtlandt avenue to East One Hundred and Fifty-sixth street; thence easterly on and along said East One Hundred and Fifty-sixth street to its intersection with Leggett avenue or Craven street; thence southerly and easterly on and along Leggett avenue or Craven street to its intersection with Dawson street; thence southeasterly on and along Leggett avenue to its intersection with Randall avenue; thence easterly on and along Randall avenue to the Bronx river.

The said route as it winds and turns crossing the following highways, avenues, streets, public places, etc.:

Lenox avenue, borough of Manhattan; Exterior street, River avenue, Gerard avenue, Walton avenue, Mott avenue, Spencer place, Railroad avenue, East, Morris avenue, East One Hundred and Fiftieth street, East One Hundred and Fifty-first street, East One Hundred and Fifty-second street, East One Hundred and Fifty-third street, East One Hundred and Fifty-fourth street, East One Hundred and Fifty-fifth street, Melrose avenue, Elton avenue, Third avenue, Brook avenue, German place, St. Ann's avenue, Eagle avenue, Cauldwell avenue, Trinity avenue, Jackson avenue, Forest avenue, Tinton avenue, Westchester avenue, Beach avenue, Union avenue, Prospect avenue, Hewitt place, Dawson street, Kelly street, Beck street, Fox street, Southern boulevard, Whitlock avenue, Mohawk avenue, Cabot street, Barry street, Dupont street, Truxton street, Craven street, Worthen street, Tiffany street, Casanova street, Barretto street, Manida street, Coster street, Faile street, Bryant street, Longfellow street, Whittier street, Drake street, Halleck street, Payne street, Bacon street, Hunt's Point road, Sacrahong street, Farragut street, Falconer street, Preble street, Kane street, Edgewater road, all in borough of the Bronx.

And such other highways, parkways, bridges, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

Seventh.—Commencing at Wendover avenue and Crotona park, East, borough of the Bronx, running thence southeasterly on and along Wendover avenue to Wilkins place; thence southerly on and along Wilkins place to Intervale avenue; thence southwesterly and southerly on and along Intervale avenue to Dongan street; thence easterly on and along Dongan street to Southern boulevard and Hunt's Point road; thence southeasterly on and along Hunt's Point road to Long Island Sound.

The said route as it winds and turns crosses the following highways, avenues, streets, public places, etc.:

Boston road, East One Hundred and Seventieth street, Jennings street, Freeman street, Barretto street, Chisholm street, East One Hundred and Sixty-ninth street, Home street, Tiffany street, Kelly street, East One Hundred and Sixty-seventh street, East One Hundred and Sixty-fifth street, Westchester avenue, Kelly street, Tiffany street, Barretto street, Fox street, Southern boulevard, Whitlock avenue, Mohawk avenue, Seneca avenue, Gilbert place, Lafayette avenue, Faile street, Bryant street, Longfellow street, Randall avenue, Whittier street, Drake street, Eastern boulevard, Halleck street, Easy Bay avenue, Payne street, Viele avenue, Bacon street, Ryawa avenue, Sacrahong avenue, Farragut street, Falconer street, Caswell avenue, Edgewater road, borough of the Bronx.

And such other highways, parkways, bridges, avenues, streets, lanes, public places, etc. (named and unnamed), as may be encountered in said route.

And a hearing having been given on said application in the city of Albany on March 23, 1905, Strong & Cadwalader (John F. Charlton appearing) for the applicant; and this Board being familiar with the general operation of the overhead single electrical trolley system of motive power in the operation of street surface railroads, it is

Ordered, that said application be and it is hereby granted and the Board of Railroad Commissioners hereby approves of the operation by the overhead single electrical trolley system of motive power of the railroad of said company upon the streets, avenues, roads and highways set forth above, with the following conditions which are hereby made a part of this approval:

First.—This application is granted and accepted subject to the lawful regulations of the local authorities, and subject to such further regulation, as to speed or otherwise, by this Board, as may hereafter seem fit and proper.

Second.—The poles from which the wires are to be suspended shall be of such a construction and height as to conform to the requirements of the local authorities.

Third.—No motor car shall be run with less than two men to operate it.

Fourth.—The company shall take all reasonable and proper means to prevent the currents from its wires, through leakage, induction or otherwise, from interfering with the currents upon the wires of other companies, whether telegraph, telephone or other wires but this provision is not intended to require that said company shall construct a double circuit.

Fifth.—Every motor car shall be equipped with gates on both ends, which on double track shall be closed on the side next to the adjoining track. No persons (except an instructor, when necessary) shall be allowed to ride on the platform with the motorman on any electric car.

Sixth.—On all open cars on double track there shall be attached a guard-rail or device on the side of the car next to the adjoining track, running the entire length of the car, to prevent passengers entering or leaving the car on that side; this guardrail or device to be of such a nature that it may be transferred from one side to the other. (Case No. 3310.) See p. 165, 1st vol., 1904 report of this Board.

## Applications for Increase of Capital Stock.

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### I.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM FIFTEEN MILLION DOLLARS (\$15,000,000) TO EIGHTEEN MILLION DOLLARS (\$18,000,000).

Determination. January 12, 1905.

Application having been made to this Board on December 30, 1904, by the Buffalo, Rochester and Pittsburgh Railway Company for approval of an increase of the capital stock of said company from fifteen million dollars (\$15,000,000) to eighteen million dollars (\$18,000,000) and certificates of the proceedings of the stockholders' meeting, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase of capital stock, having been presented to this Board; and a hearing having been given on said application before this Board in the city of Albany on January 12, 1905, Adrian Iselin, Jr., appearing for the applicant; and the purposes to which the proceeds of the amount of the increase of the capital stock of said company hereby consented to are to be devoted appearing from the petition herein, it is

Ordered, That the increase of the capital stock of the Buffalo, Rochester and Pittsburgh Railway Company from fifteen million dollars (\$15,000,000) to eighteen million dollars (\$18,000,000) be and the same is hereby approved by this Board and that endorsement of such approval be made upon the certificates of the stockholders' meeting according to the provisions of the Stock Corporation Law, on condition that but one million five hundred thousand dollars (\$1,500,000) of said increase of stock be issued under this approval and that the remaining one million five hundred thousand dollars (\$1,500,000) of said increase of stock or any part thereof shall not be issued until after further application is made to this Board by said company for approval of the issuance of said one million five hundred thousand dollars (\$1,500,000) of said increase of stock or any part thereof and such approval of this Board has been received to the issuance of said one million five hundred thousand dollars (\$1,500,000) of said increase of stock or any part thereof. (Case No. 3269.)

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### II.

IN THE MATTER OF THE APPLICATION OF THE EASTERN NEW YORK RAILROAD COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM ONE HUNDRED THOUSAND DOLLARS (\$100,000) TO ONE MILLION, SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,750,000).

Determination. January 12, 1905.

Application having been made to this Board on January 9, 1905, by the Eastern New York Railroad Company, for approval of an increase of the capital stock of said company from one hundred thousand dollars (\$100,000) to one million, seven hundred and fifty thousand dollars (\$1,750,000)—the petition also embracing an application for consent to the issue of a first mortgage for one million, seven hundred and fifty thousand dollars (\$1,750,000); and certificates of the proceedings of the stockholders' meeting, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase of capital stock, having been presented to this Board; and a hearing having been given on said application before this



Board in the city of Albany on January 12, 1905, T. F. Barrett appearing for the applicant; and the purposes to which the proceeds of the amount of the increase of the capital stock of said company hereby consented to are to be devoted appearing from the petition and from the affidavit of John M. Farley herein, it is

Ordered, That the increase of the capital stock of the Eastern New York Railroad Company from one hundred thousand dollars (\$100,000) to one million, seven hundred and fifty thousand dollars (\$1,750,000) be and the same is hereby approved by this Board, and that endorsement of such approval be made upon the certificates of the stockholders' meeting according to the provisions of the Stock Corporation Law, on condition that but four hundred thousand dollars (\$400,000) of said increase of stock be issued under this approval and that the remaining one million, two hundred and fifty thousand dollars (\$1,250,000) of said increase of stock or any part thereof shall not be issued until after further application is made to this Board by said company for approval of the issuance of said one million, two hundred and fifty thousand dollars (\$1,250,000) of said increase of stock or any part thereof and such approval of this Board has been received to the issuance of said one million two hundred and fifty thousand dollars (\$1,250,000) of said increase of stock or any part thereof. (Case No. 3278.)

### III.

IN THE MATTER OF THE APPLICATION OF THE HAMBURG RAILWAY COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM TWO HUNDRED THOUSAND DOLLARS (\$200,000) TO THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000).

Determination. January 26, 1905.

Application having been made to this Board on January 26, 1905, by the Hamburg Railway Company, for approval of an increase of the capital stock of said company from two hundred thousand dollars (\$200,000) to three hundred and fifty thousand dollars (\$350,000); and a hearing having been given on said application before this Board in the city of Albany on January 26, 1905, Daniel W. Allen appearing for the applicant; and certificates of the proceedings of the stockholders' meeting, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase, having been presented to this Board; and the purposes to which the proceeds of the said proposed increase of the capital stock of said company are to be devoted appearing from the verified petition and the affidavit of Dennison Fairchild herein, it is

Ordered, That the increase of the capital stock of the Hamburg Railway Company from two hundred thousand dollars (\$200,000) to three hundred and fifty thousand dollars (\$350,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the stockholders' meeting according to the provisions of the Stock Corporation Law. (Case No. 3290.)

### IV.

IN THE MATTER OF THE APPLICATION OF THE ITHACA-CORTLAND TRACTION COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM TWO HUNDRED THOUSAND DOLLARS (\$200,000) TO ONE MILLION DOLLARS (\$1,000,000).

Determination. March 23, 1905.

Application having been made to this Board on February 7, 1905, by the Ithaca-Cortland Traction Company, for approval of an increase of the capital

stock of said company from two hundred thousand dollars (\$200,000) to one million dollars (\$1,000,000) and a hearing having been given on said application before this Board in the city of Albany on February 15, 1905, E. H. Chandler and George E. Monroe appearing for the applicant; and certificates of the proceedings of the stockholders' meeting, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase, having been presented to this Board; and the purposes to which the proceeds of the said proposed increase of the capital stock of said company are to be devoted appearing from the affidavits of Howard L. Chandler herein, it is

Ordered, That the increase of the capital stock of the Ithaca-Cortland Traction Company from two hundred thousand dollars (\$200,000) to one million dollars (\$1,000,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the stockholders' meeting according to the provisions of the Stock Corporation Law. (Case No. 3297.)

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### V.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CITY INTERBOROUGH RAILWAY COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM FOUR HUNDRED THOUSAND DOLLARS (\$400,000) TO FIVE MILLION DOLLARS (\$5,000,000).

Determination. March 23, 1905.

Application having been made to this Board on March 18, 1905, by the New York City Interborough Railway Company, for approval of an increase of the capital stock of said company from four hundred thousand dollars (\$400,000) to five million dollars (\$5,000,000); and a hearing having been given on said application before this Board in the city of Albany on March 23, 1905, Strong & Cadwalader (Mr. John F. Charlton appearing) for the applicant; and certificates of the unanimous consent of the stockholders of said company, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase, having been presented to this Board; and the purposes to which the proceeds of the said proposed increase of the capital stock of said company are to be devoted appearing from the verified petition and the affidavit of Arthur Turnbull herein, it is

Ordered, That the increase of the capital stock of the New York City Interborough Railway Company from four hundred thousand dollars (\$400,000) to five million dollars (\$5,000,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the unanimous consent of the stockholders according to the provisions of the Stock Corporation Law. (Case No. 3308.)

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### VI.

IN THE MATTER OF THE APPLICATION OF THE ROCHESTER, SYRACUSE AND EASTERN RAILROAD COMPANY FOR APPROVAL OF AN INCREASE OF ITS COMMON CAPITAL STOCK FROM ONE MILLION DOLLARS (\$1,000,000) TO THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000), THE TOTAL CAPITAL STOCK (PREFERRED AND COMMON) WITH SUCH INCREASE TO AMOUNT TO SIX MILLION DOLLARS (\$6,000,000).

Determination. April 18, 1905.

Application having been made to this Board on April 10, 1905, by the Rochester, Syracuse and Eastern Railroad Company, for approval of an increase of the common capital stock of said company from one million

dollars (\$1,000,000) to three million five hundred thousand dollars (\$3,500,000), the total capital stock (preferred and common) with such increase to amount to six million dollars (\$6,000,000); and a hearing having been given on said application before this Board in the city of Albany on April 18, 1905, William Nottingham appearing for the applicant; and certificates of the unanimous consent of the stockholders of said company to said increase showing a compliance with the provisions of the Stock Corporation Law in relation to said increase having been presented to this Board; and the purposes to which the proceeds of said proposed increase of the common capital stock of said company are to be devoted appearing from the verified petition and the affidavit of Albert K. Hiscock herein and from evidence at the hearing, it is

Ordered, That the increase of the common capital stock of the Rochester, Syracuse and Eastern Railroad Company from one million dollars (\$1,000,000) to three million five hundred thousand dollars (\$3,500,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the unanimous consent of the stockholders to said increase according to the provisions of the Stock Corporation Law.

The total capital stock of the company (preferred and common) with the common capital stock increased from one million dollars (\$1,000,000) to three million five hundred thousand dollars (\$3,500,000) is six million dollars (\$6,000,000). (Case No. 3328.)

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## VII.

IN THE MATTER OF THE APPLICATION OF THE ROCHESTER RAILWAY COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000) TO SIX MILLION DOLLARS (\$6,000,000).

Determination. April 18, 1905.

Application having been made to this Board on April 14, 1905, by the Rochester Railway Company, for approval of an increase of the capital stock of said company from five million five hundred thousand dollars (\$5,500,000) to six million dollars (\$6,000,000), and a hearing having been given on said application before this Board in the city of Albany on April 18, 1905, Charles J. Bissell appearing for the applicant; and certificates of the proceedings of the stockholders' meeting, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase, having been presented to this Board; and the purposes to which the proceeds of the said proposed increase of the capital stock of said company are to be devoted appearing at the hearing and from the affidavit of Irving E. Matthews herein, it is

Ordered, That the increase of the capital stock of the Rochester Railway Company from five million five hundred thousand dollars (\$5,500,000) to six million dollars (\$6,000,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the stockholders' meeting according to the provisions of the Stock Corporation Law. (Case No. 3331.)

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## VIII.

IN THE MATTER OF THE APPLICATION OF THE BUSH TERMINAL RAILROAD COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM FIFTEEN THOUSAND DOLLARS (\$15,000) TO TWENTY THOUSAND DOLLARS (\$20,000).

Determination. April 18, 1905.

Application having been made to this Board on April 7, 1905, by the Bush Terminal Railroad Company, for approval of an increase of the capital stock

of said company from fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000); and certificates of the unanimous consent of the stockholders of said company to such increase of capital stock and showing a compliance with the provisions of the Stock Corporation Law in relation thereto having been presented to this Board; and the reason for said proposed increase of capital stock appearing from the affidavit of Frank Gallagher herein, it is

Ordered, That the increase of the capital stock of the Bush Terminal Railroad Company from fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the unanimous consent of the stockholders to said increase according to the provisions of the Stock Corporation Law. (Case No. 3325.)

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### IX.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, LOCKPORT AND ROCHESTER RAILWAY COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM FIVE HUNDRED AND NINETY THOUSAND DOLLARS (\$590,000) TO FOUR MILLION DOLLARS (\$4,000,000).

Determination. June 28, 1905.

Application having been made to this Board on June 24, 1905, by the Buffalo, Lockport and Rochester Railway Company, for approval of an increase of the capital stock of said company from five hundred and ninety thousand dollars (\$590,000) to four million dollars (\$4,000,000), and a hearing having been given on said application before this Board in the city of Auburn on June 28, 1905, A. B. Boardman appearing for the applicant, and certificates of the unanimous consent of the stockholders of said company to said increase of the capital stock of said company showing a compliance with the provisions of the Stock Corporation Law in relation to said increase of the capital stock of said company having been presented to this Board, and the purposes to which the proceeds of the said increase of the capital stock of said company are to be devoted appearing from the verified petition and the affidavit of F. W. Conn herein, it is

Ordered, That the increase of the capital stock of the Buffalo, Lockport and Rochester Railway Company from five hundred and ninety thousand dollars (\$590,000) to four million dollars (\$4,000,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the unanimous consent of the stockholders according to the provisions of the Stock Corporation Law. (Case No. 3373.)

See page 168, first volume, 1904 report of this Board as to Albion Electric railway of which this company is the successor.

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### X.

IN THE MATTER OF THE APPLICATION OF THE LOWVILLE AND BEAVER RIVER RAILROAD COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000) TO TWO HUNDRED THOUSAND DOLLARS (\$200,000).

Determination. August 14, 1905.

Application having been made to this Board on August 9, 1905, by the Lowville and Beaver River Railroad Company, for approval of an increase

of the capital stock of said company from one hundred and fifty thousand dollars (\$150,000) to two hundred thousand dollars (\$200,000); and a hearing having been given on said application before this Board in the city of Albany on August 14, 1905, H. H. Ryell appearing for the applicant; and certificates of the proceedings of the stockholders' meeting, showing a compliance with the provisions of the Stock Corporation Law in relation to said increase, having been presented to this Board; and the purposes to which the proceeds of the said increase of the capital stock of said company are to be devoted appearing from the verified petition and the affidavit of Gilbert A. Blackmon herein, it is

Ordered, That the increase of the capital stock of the Lowville and Beaver River Railroad Company from one hundred and fifty thousand dollars (\$150,000) to two hundred thousand dollars (\$200,000) be and the same is hereby approved by this Board and that indorsement of such approval be made upon the certificates of the stockholders' meeting according to the provisions of the Stock Corporation Law. (Case No. 3398.)

## XI.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY FOR APPROVAL OF AN INCREASE OF ITS CAPITAL STOCK FROM ONE HUNDRED AND FIFTEEN MILLION DOLLARS (\$115,000,000) TO ONE HUNDRED AND FIFTY MILLION DOLLARS (\$150,000,000).

Supplemental Determination. November 29, 1905.

On April 16, 1902, this Board approved of an increase of the capital stock of the New York Central and Hudson River Railroad Company from one hundred and fifteen million dollars (\$115,000,000) to one hundred and fifty million dollars (\$150,000,000), (the increase being thirty-five million dollars \$35,000,000)—with the provision that not to exceed seventeen million two hundred and fifty thousand dollars (\$17,250,000) of such increase should be issued without further authority of this Board, as shown by order of said date. On November 22, 1905, application was made to the Board by said company for approval of the issue of seventeen million one hundred and ninety-two thousand five hundred dollars (\$17,192,500) additional capital stock of said thirty-five million dollars (\$35,000,000) increase, and a public hearing on said application was held by this Board in the city of Elmira on November 28, 1905, at which Ira A. Place appeared for the applicant company. After hearing evidence and arguments the hearing was closed. From the evidence produced at said hearing the Board deems that it is justified in approving the issue of the additional seventeen million one hundred and ninety-two thousand five hundred dollars (\$17,192,500) capital stock, leaving five hundred and fifty-seven thousand five hundred dollars (\$557,500) authority for the issue of which is yet to be obtained from this Board. It is hereby

Ordered, That the issue by the New York Central and Hudson River Railroad Company of seventeen million one hundred and ninety-two thousand five hundred dollars (\$17,192,500) capital stock of said company of a total increase of thirty-five million dollars (\$35,000,000) capital stock of said company approved in an order of this Board, dated April 16, 1902, be and the same is hereby authorized and approved by this Board, leaving five hundred and fifty-seven thousand five hundred dollars (\$557,500) authority for the issue of which is yet to be obtained from this Board. (Case No. 2665.)

See page 210, first volume, report of this Board for 1902.

## XII.

IN THE MATTER OF THE APPLICATION OF ERIE RAILROAD COMPANY FOR INDORSEMENT OF APPROVAL ON CERTIFICATE OF INCREASE OF CAPITAL STOCK.

Determination. December 19, 1905.

(Indorsement on Certificate.)

The Board of Railroad Commissioners hereby approves the within certificate and the increase of the common stock of Erie Railroad Company from one hundred and thirty-three million dollars (\$133,000,000) to one hundred and fifty-three million dollars (\$153,000,000), as therein provided.

The Board of Railroad Commissioners.

(Signed)

FRANK M. BAKER,

J. M. DICKEY,

HENRY N. ROCKWELL,

*Commissioners.*

The Board of Railroad Commissioners,

By J. S. KENNEDY, *Secretary.*

(Case No. 3453.)

## **Applications for Consent to Issue of Mortgages.**

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### **I.**

**IN THE MATTER OF THE APPLICATION OF THE EASTERN NEW YORK RAILROAD COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR ONE MILLION SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,750,000).**

**Determination. January 12, 1905.**

Application having been made to this Board on January 9, 1905, by the Eastern New York Railroad Company, under subdivision 10 of section 4 of the Railroad Law,—the petition also embracing an application for approval of an increase of the capital stock of said company from one hundred thousand dollars (\$100,000) to one million, seven hundred and fifty thousand dollars (\$1,750,000)—for consent to the issuance by said company of a first mortgage for one million, seven hundred and fifty thousand dollars (\$1,750,000); and a hearing having been given on said application before this Board in the city of Albany on January 12, 1905, T. F. Barrett appearing for the applicant; and the purposes to which the proceeds of said mortgage are to be devoted appearing for the petition and the affidavit of John M. Farley herein; and it appearing that the owners of capital stock of the company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, The Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Eastern New York Railroad Company of a first mortgage for one million, seven hundred and fifty thousand dollars (\$1,750,000), on condition that but five hundred thousand dollars (\$500,000) bonds shall be issued thereunder under this consent and on condition that said company before issuing the remaining one million, two hundred and fifty thousand dollars (\$1,250,000) bonds or any part thereof under said mortgage shall apply for and secure the further consent of this Board to such issuance of said one million, two hundred and fifty thousand dollars (\$1,250,000) bonds or any part thereof. (Case No. 3278.)

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### **II.**

**IN THE MATTER OF THE APPLICATION OF THE ITHACA-CORTLAND TRACTION COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$775,000).**

**Determination. January 26, 1905.**

Application having been made to this Board on January 12, 1905, by the Ithaca-Cortland Traction Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for seven hundred seventy-five thousand dollars (\$775,000); and a hearing having been given on said application before this Board in the city of Albany on January 26, 1905, George E. Monroe appearing for the applicant; and the purposes for which the said first mortgage is to be issued appearing from the affidavit of Howard L. Chandler herein; and it appearing that the owners of the capital stock of the said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Ithaca-Cortland Traction Company of a first mortgage for seven hundred seventy-five thousand dollars (\$775,000).

On January 27, 1904, this Board consented to the issuance by the Ithaca-Cortland Traction Company of a first mortgage for six hundred fifty thousand dollars (\$650,000). The company is to cancel the mortgage thus consented to and the present consent of this Board to the issuance by said company of a first mortgage for seven hundred seventy-five thousand dollars (\$775,000) is upon condition that said mortgage for six hundred fifty thousand dollars (\$650,000) be canceled prior to the filing of the first mortgage for seven hundred seventy-five thousand dollars (\$775,000) hereby consented to.

The order of this Board, dated January 27, 1904, consenting to the issuance by the Ithaca-Cortland Traction Company of a first mortgage for six hundred fifty thousand dollars (\$650,000) is hereby annulled. (Case No. 3283.)

See page 174, first volume, 1904 report of this Board.

### III.

IN THE MATTER OF THE APPLICATION OF THE ELLENVILLE AND KINGSTON RAILROAD COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR SIX HUNDRED AND FIFTY THOUSAND DOLLARS (\$650,000).

Determination. February 15, 1905.

Application having been made to this Board on February 7, 1905, by the Ellenville and Kingston Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for six hundred and fifty thousand dollars (\$650,000); and a hearing having been given on said application before this Board in the city of Albany on February 15, 1905, John B. Kerr appearing for the applicant; and the purposes for which the said first mortgage is to be issued appearing from the verified petition and the affidavit of R. D. Rickard herein; and it appearing that the owners of capital stock of the said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Ellenville and Kingston Railroad Company of a first mortgage for six hundred and fifty thousand dollars (\$650,000). (Case No. 3298.)

### IV.

IN THE MATTER OF THE APPLICATION OF THE PORT JERVIS, MONTICELLO AND SUMMITVILLE RAILROAD COMPANY FOR CONSENT TO THE ISSUE OF A MORTGAGE FOR FOUR HUNDRED AND FIFTY THOUSAND DOLLARS (\$450,000).

Determination. February 15, 1905.

Application having been made to this Board on February 7, 1905, by the Port Jervis, Monticello and Summitville Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a mortgage for four hundred and fifty thousand dollars (\$450,000); and a hearing having been given on said application before this Board in the city of Albany on February 15, 1905, John B. Kerr appearing for the applicant; and the purposes for which the said mortgage is to be issued appearing from the verified petition and the affidavit of Arthur L. Parmelee herein; and it appearing that the owners of capital stock of



the said company to an amount equal to that required by the statute have consented to the issuance of said mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Port Jervis, Monticello and Summitville Railroad Company of a mortgage for four hundred and fifty thousand dollars (\$450,000). (Case No. 3299.)

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V.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK, AUBURN AND LANSING RAILROAD COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR ONE MILLION DOLLARS (\$1,000,000).

March 1, 1905.

Application having been made to this Board on January 28, 1905, by the New York, Auburn and Lansing Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for one million dollars (\$1,000,000); and hearings having been given on said application before this Board in the city of Auburn on February 16 and in the city of New York on March 1, 1905, E. C. Aiken appearing for the applicant: and the purposes to which the proceeds of said mortgage are to be devoted appearing from the verified petition and the affidavit of Herbert A. Clarke herein; and it appearing that the owners of capital stock of the company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the New York, Auburn and Lansing Railroad Company of a first mortgage for one million dollars (\$1,000,000), on condition that but two hundred thousand dollars (\$200,000) bonds shall be issued thereunder, under this consent and on condition that said company before issuing the remaining eight hundred thousand dollars (\$800,000) bonds or any part thereof under said first mortgage shall apply for and secure the further consent of this Board to such issuance of said eight hundred thousand dollars (\$800,000) bonds or any part thereof. (Case No. 3291.)

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VI.

IN THE MATTER OF THE APPLICATION OF THE ITHACA AND CAYUGA HEIGHTS RAILWAY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR FORTY THOUSAND DOLLARS (\$40,000).

Determination. March 9, 1904.

Application having been made to this Board on February 27, 1905, by the Ithaca and Cayuga Heights railway, under subdivision 10 of section 4 of the Railroad Law, for consent to the issue of a first mortgage for forty thousand dollars (\$40,000); and the purposes for which said first mortgage is to be issued appearing from the verified petition and the affidavit of Charles L. Crandall herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Ithaca and Cayuga Heights railway of a first mortgage for forty thousand dollars (\$40,000). (Case No. 3304.)

VII.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CITY INTERBOROUGH RAILWAY COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR FIVE MILLION DOLLARS (\$5,000,000).

Determination. March 23, 1905.

Application having been made to this Board on March 18, 1905, by the New York City Interborough Railway Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issue of a first mortgage for five million dollars (\$5,000,000); and a hearing having been given on said application before this Board in the city of Albany on March 23, 1905, Strong & Cadwalader (Mr. John F. Charlton appearing) for the applicant; from the verified petition and the affidavit of Arthur Turnbull herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the New York City Interborough Railway Company of a first mortgage for five million dollars (\$5,000,000). (Case No. 3309.)

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VIII.

IN THE MATTER OF THE APPLICATION OF THE SYRACUSE AND SOUTH BAY RAILWAY COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR THREE HUNDRED THOUSAND DOLLARS (\$300,000).

Determination. April 18, 1905.

Application having been made to this Board on April 12, 1905, by the Syracuse and South Bay Railway Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issue by said company of a first mortgage for three hundred thousand dollars (\$300,000); and a hearing having been given on said application before this Board in the city of Albany on April 18, 1905, Louis L. Waters, Robert E. Drake and Frederick T. Pierson appearing for the applicant; and the purposes for which the said first mortgage is to be issued appearing for the verified petition and the affidavit herein of Willard K. Kimball and from evidence at the hearing; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Syracuse and South Bay Railway Company of a first mortgage for three hundred thousand dollars (\$300,000). (Case No. 3328.)

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IX.

IN THE MATTER OF THE APPLICATION OF THE ROCHESTER, SYRACUSE AND EASTERN RAILROAD COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000).

Determination. April 18, 1905.

Application having been made to this Board on April 12, 1905, by the Rochester, Syracuse and Eastern Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said

company of a first mortgage for seven million five hundred thousand dollars (\$7,500,000); and a hearing having been given on said application before this Board in the city of Albany on April 18, 1905, William Nottingham appearing for the applicant; and the purposes to which the proceeds of said mortgage are to be devoted appearing from the verified petition and the affidavit of Albert K. Hiscock herein and from evidence at the hearing; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Rochester, Syracuse and Eastern Railroad Company of a first mortgage for seven million five hundred thousand dollars (\$7,500,000) on condition that but two million dollars (\$2,000,000) bonds shall be issued under said first mortgage under this consent and on condition that said company before issuing the remaining five million five hundred thousand dollars (\$5,500,000) bonds or any part thereof under said first mortgage shall apply for and secure the further consent of this Board to such issuance of said five million five hundred thousand dollars (\$5,500,000) bonds or any part thereof under said first mortgage. (Case No. 3329.)

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### X.

**IN THE MATTER OF THE APPLICATION OF THE WALLKILL TRANSIT COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000).**

**Determination. April 26, 1905.**

Application having been made to this Board on April 26, 1905, by the Wallkill Transit Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issue by said company of a first mortgage for three hundred and fifty thousand dollars (\$350,000); and a hearing having been given on said application before this Board in the city of New York on April 26, 1905, W. B. Royce appearing for the applicant; and the purposes for which the said first mortgage is to be issued appearing from the verified petition and the affidavit of Frank G. Brown herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Wallkill Transit Company of a first mortgage for three hundred and fifty thousand dollars (\$350,000) on condition that but three hundred thousand dollars (\$300,000) bonds shall be issued under said first mortgage under this consent and on condition that said company before issuing the remaining fifty thousand dollars (\$50,000) bonds or any part thereof under said first mortgage shall apply for and secure the further consent of this Board to such issuance of said fifty thousand dollars (\$50,000) bonds or any part thereof under said first mortgage. (Case No. 3339.)

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### XI.

**IN THE MATTER OF THE APPLICATION OF THE NEWARK AND MARION RAILWAY COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR FIVE HUNDRED THOUSAND DOLLARS (\$500,000).**

**Determination. May 24, 1905.**

Application having been made to this Board on May 19, 1905, by the Newark and Marion Railway Company, under subdivision 10 of section 4, of the Railroad Law, for consent to the issuance by said company of a

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first mortgage for five hundred thousand dollars (\$500,000); and a hearing having been given on said application before this Board in the city of New York on May 24, 1905, William Nottingham appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition and the affidavit of Ernest I. Edgecomb herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Newark and Marion Railway Company of a first mortgage for five hundred thousand dollars (\$500,000) on condition that but two hundred and fifty thousand dollars (\$250,000) bonds shall be issued under said first mortgage under this consent and on condition that said company before issuing the remaining two hundred and fifty thousand dollars (\$250,000) bonds or any part thereof under said first mortgage shall apply for and secure the further consent of this Board to such issuance of said remaining two hundred and fifty thousand dollars (\$250,000) bonds or any part thereof under said first mortgage. (Case No. 3348.)

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### XII.

IN THE MATTER OF THE APPLICATION OF THE AUBURN AND NORTHERN ELECTRIC RAILROAD COMPANY FOR CONSENT TO THE ISSUE OF A FIRST MORTGAGE FOR ONE MILLION DOLLARS (\$1,000,000).

Determination. May 24, 1905.

Application having been made to this Board on May 22, 1905, by the Auburn and Northern Electric Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for one million dollars (\$1,000,000); and a hearing having been given on said application before this Board in the city of New York on May 24, 1905, William Nottingham appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition and the affidavit of Charles Hoskins herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, it is

Ordered. That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Auburn and Northern Electric Railroad Company of a first mortgage for one million dollars (\$1,000,000) on condition that but five hundred thousand dollars (\$500,000) bonds shall be issued under said first mortgage under this consent and on condition that said company before issuing the remaining five hundred thousand (\$500,000) bonds or any part thereof under said first mortgage shall apply for and secure the further consent of this Board to such issuance of said remaining five hundred thousand dollars (\$500,000) bonds or any part thereof under said first mortgage. (Case No. 3350.)

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### XIII.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK AND OTTAWA RAILWAY COMPANY FOR THE APPROVAL OF THE BOARD OF RAILROAD COMMISSIONERS OF A FIRST MORTGAGE TO SECURE BONDS IN THE PRINCIPAL SUM OF TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000).

Determination. June 15, 1905.

Application having been duly made to the Board of Railroad Commissioners by the New York and Ottawa Railway Company, for the consent of said

Board, under subdivision 10 of section 4 of the Railroad Law, to the issue by the said railway company of a first mortgage for two million five hundred thousand dollars (\$2,500,000); and a hearing having been given on said application before this Board in the city of Albany on June 15, 1905, Ira A. Place appearing for the applicant; and the purposes for which the said mortgage is to be issued appearing from the petition herein verified by William H. Newman, the president of the said company; and it appearing that the owners of the entire capital stock of the said company have consented to the issue of said mortgage, it is

Ordered, That the Board of Railroad Commissioners consents, and it does hereby consent, to the issue by the New York and Ottawa Railway Company of a first mortgage for two million five hundred thousand dollars (\$2,500,000). (Case No. 3358.)

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XIV.

IN THE MATTER OF THE APPLICATION OF THE WAVERLY, SAYRE AND ATHENS TRACTION COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR FIVE MILLION DOLLARS (\$5,000,000).

Determination. June 28, 1905.

Application having been made to this Board on June 26, 1905, by the Waverly, Sayre and Athens Traction Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for five million dollars (\$5,000,000); and a hearing having been given on said application before this Board in the city of Auburn on June 28, 1905; C. A. Collin and A. C. Wade appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage; but it being the opinion of this Board from the papers in the case and the statements at the hearing that it should at this time consent only to the issuance of a mortgage for two million dollars (\$2,000,000), it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Waverly, Sayre and Athens Traction Company of a first mortgage for two million dollars (\$2,000,000). (Case No. 3375.)

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XV.

IN THE MATTER OF THE APPLICATION OF ERIE AND JERSEY RAILROAD COMPANY FOR THE CONSENT OF THE BOARD OF RAILROAD COMMISSIONERS TO THE MORTGAGING OF ITS PROPERTY AND FRANCHISES.

Determination. June 28, 1905.

Application having been duly made to this Board by Erie and Jersey Railroad Company for consent of the Board under subdivision 10 of section 4 of the Railroad Law, to the issuance by said company of a mortgage or deed of trust mortgaging and pledging to a trustee therein named any or all of the railroads, property and franchises now owned or hereafter acquired by Erie and Jersey Railroad Company, as security for the payment of its four per cent. (4%) fifty (50) year gold bonds, when and as issued, for an aggregate principal sum not exceeding ten million dollars (\$10,000,000), George F. Brownell, Esquire, appearing for the applicant; and the purposes for which the said mortgage is to be issued appearing from the verified petition herein and from the affidavit of Francis L. Stuart filed with said petition; and it appearing that the owners of all of the capital stock of the company to an amount in excess of that required by the statute have consented to the issuance of said mortgage, it is

Ordered, That the Board of Railroad Commissioners consents, and it does hereby consent, to the issuance by the Erie and Jersey Railroad Company of such mortgage securing the payment of four per cent. (4%) fifty (50) year gold bonds for the aggregate principal sum of ten million dollars (\$10,000,000).

#### MEMORANDUM.

This application has been granted by this Board on this date. It seems pertinent to the Board to say that the mortgage is being issued for the construction at once of this important railroad, which adds to the facilities of transportation of the Erie railroad between Highland Mills and Guymard as well as to the taxable property of the State. (Case No. 3360.)

#### XVI.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, BATAVIA AND ROCHESTER ELECTRIC RAILWAY COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000).

Determination. June 28, 1905.

Application having been made to this Board on June 22, 1905, by the Buffalo, Batavia and Rochester Electric Railway Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for three million five hundred thousand dollars (\$3,500,000); and a hearing having been given on said application before this Board in the city of Auburn on June 28, 1905, George L. Lewis appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition and the affidavit of George R. Sikes herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage, and there having been filed with this Board on June 28 a supplementary petition by the applicant to the effect that upon the issuance of this mortgage one hundred and seventeen thousand five hundred dollars (\$117,500) of bonds thereunder will be used for the purpose of retiring all of the bonds issued by the Buffalo and Williamsville Electric Railway Company under a first mortgage for three million five hundred thousand dollars (\$3,500,000) consented to by this Board on May 24, 1904, and that the said first mortgage of the Buffalo and Williamsville Electric Railway Company will be discharged of record and the said amount one hundred and seventeen thousand five hundred dollars (\$117,500) of bonds issued thereunder canceled,—this applicant, the Buffalo, Batavia and Rochester Electric Railway Company, stating that because of the ownership interests in it being substantially the same as the ownership interests in the Buffalo and Williamsville Electric Railway Company, it is enabled to exchange one hundred and seventeen thousand five hundred dollars (\$117,500) of the bonds to be issued under this mortgage for the one hundred and seventeen thousand five hundred dollars (\$117,500) bonds issued under the said Buffalo and Williamsville Electric Railway Company mortgage, and to procure the discharge of the said mortgage of the Buffalo and Williamsville Electric Railway Company and the cancellation of the said one hundred and seventeen thousand five hundred dollars (\$117,500) bonds of the Buffalo and Williamsville Electric Railway Company, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Buffalo, Batavia and Rochester Electric Railway Company of a first mortgage for three million five hundred thousand dollars (\$3,500,000) on condition that the said Buffalo and Williamsville Electric Railway Company first mortgage for three million five hundred thousand dollars (\$3,500,000) consented to by this Board on May 24, 1904, shall be discharged, after this first mortgage hereby consented to shall have

been recorded, and on condition that the said one hundred and seventeen thousand five hundred dollars (\$117,500) bonds issued under said Buffalo and Williamsville Electric Railway Company first mortgage shall be cancelled after this first mortgage hereby consented to shall have been recorded. (Case No. 3368.)

See page 178, first volume, 1904 report of this Board as to mortgage of Buffalo and Williamsville Electric Railway Company.

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**XVII.**

**IN THE MATTER OF THE APPLICATION OF THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR TEN MILLION DOLLARS (\$10,000,000).**

**Determination. June 28, 1905.**

Application having been made to this Board on June 21, 1905, by the Staten Island Rapid Transit Railway Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for ten million dollars (\$10,000,000); and a hearing having been given on said application before this Board in the city of Auburn on June 28, 1905, Lester W. Clark and George H. Campbell appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition and the affidavits of George H. Campbell, Patrick H. Cassidy and Edward Curry herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage; but it being the opinion of this Board from the papers in the case and the statements at the hearing that it should at this time consent only to the issuance of a mortgage for five million dollars (\$5,000,000), it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Staten Island Rapid Transit Railway Company of a first mortgage for five million dollars (\$5,000,000). (Case No. 3366.)

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**XVIII.**

**IN THE MATTER OF THE APPLICATION OF THE CORTLAND COUNTY TRACTION COMPANY FOR CONSENT TO THE ISSUE OF A MORTGAGE FOR FIVE HUNDRED THOUSAND DOLLARS.**

**Determination. June 28, 1905.**

Application having been made to this Board on June 15, 1905, by the Cortland County Traction Company, under subdivision 10 of section 4 of the Railroad Law, for consent of this Board to the issuance by said company of a mortgage for five hundred thousand dollars (\$500,000), and hearings having been given on said application before this Board in the city of New York on the 21st day of June, 1905, and in the city of Auburn on the 28th day of June, 1905, Henry A. Dickinson and Edwin Duffey appearing for the applicant, and the purpose for which the mortgage is to be issued appearing from the verified petition and the affidavits of Edwin Duffey herein; and it appearing that owners of capital stock of the company to an amount equal to that required by the statute have consented to the issue of said mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Cortland County Traction Company of a mortgage for five hundred thousand dollars (\$500,000). (Case No. 3361.)

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### XIX.

IN THE MATTER OF THE APPLICATION OF THE OLEAN STREET RAILWAY COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000) ON THE PROPOSED EXTENSION OF ITS RAILWAY FROM ALLEGANY TO SALAMANCA.

Determination. June 28, 1905.

Application having been made to this Board on May 18, 1905, by the Olean Street Railway Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for three hundred and fifty thousand dollars (\$350,000) upon its proposed extension from Allegany to Salamanca; and hearings having been given on said application before this Board in the city of New York on June 20 and in the city of Auburn on June 28, 1905, William L. Marcy appearing for the applicant; and the purposes to which the proceeds of said first mortgage on said extension are to be devoted appearing from the verified petition and the affidavit of Wilson R. Page herein; and it appearing that the owners of capital stock of said company to an amount equal to that required by the statute have consented to the issuance of said first mortgage on said extension, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Olean Street Railway Company of a first mortgage for three hundred and fifty thousand dollars (\$350,000) on the proposed extension of its railway from Allegany to Salamanca. (Case No. 3347.)

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### XX.

IN THE MATTER OF THE APPLICATION OF THE LEHIGH AND LAKE ERIE RAILROAD COMPANY FOR CONSENT TO ISSUE A FIRST MORTGAGE FOR THREE MILLION DOLLARS.

Determination. June 28, 1905.

Application having been heretofore made to this Board by the Lehigh and Lake Erie Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said corporation of a first mortgage for three million dollars to the United States Mortgage and Trust Company, as trustee, to secure the payment of an issue of fifty-year, four per cent. bonds of said corporation; and a hearing having been given on said application before this Board on this date; and Walter P. Cooke, Esq., appearing for the applicant; and the purposes for which said mortgage is to be issued appearing from the verified petition and the affidavit of Walter G. Berg herein; and it appearing that the owners of the capital stock of the company, to an amount equal to that required by the statute, have consented to the issuance of said mortgage, it is

Ordered, That the Board of Railroad Commissioners consents, and it does hereby consent, to the issuance by said the Lehigh and Lake Erie Railroad Company of a first mortgage for three million dollars (\$3,000,000). (Case No. 3370.)

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### XXI.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, LOCKPORT AND ROCHESTER RAILWAY COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR FOUR MILLION DOLLARS (\$4,000,000).

Determination. June 28, 1905.

Application having been made to this Board on June 24, 1905, by the Buffalo, Lockport and Rochester Railway Company, under subdivision 10



of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for four million dollars (\$4,000,000); and a hearing having been given on said application before this Board in the city of Auburn on June 28, 1905, A. B. Boardman appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition and the affidavit of F. W. Conn herein; and it appearing that the owners of capital stock of said company, to an amount equal to that required by the statute, have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Buffalo, Lockport and Rochester Railway Company of a first mortgage for four million dollars (\$4,000,000). (Case No. 3374.)

See page 179, first volume, 1904 report of this Board as to Albion Electric railway of which this company is the successor.

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## XXII.

IN THE MATTER OF THE APPLICATION OF THE ELECTRIC CITY RAILWAY COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

Determination. June 28, 1905.

Application having been made to this Board on June 28, 1905, by The Electric City Railway Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for five hundred thousand dollars (\$500,000); and a hearing having been given on said application before this Board in the city of Auburn on June 28, 1905, P. F. King appearing for the applicant; and the purposes to which the proceeds of said first mortgage are to be devoted appearing from the verified petition and the affidavit of S. P. Franchot herein; and it appearing that the owners of capital stock of said company, to an amount equal to that required by the statute, have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by The Electric City Railway Company of a first mortgage for five hundred thousand dollars (\$500,000). (Case No. 3376.)

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## XXIII.

IN THE MATTER OF THE APPLICATION OF THE ALBANY AND SUSQUEHANNA RAILROAD COMPANY FOR CONSENT TO THE ISSUANCE OF A FIRST MORTGAGE FOR TEN MILLION DOLLARS (\$10,000,000).

Determination. June 28, 1905.

Application having been made to this Board on May 31, 1905, by the Albany and Susquehanna Railroad Company, under subdivision 10 of section 4 of the Railroad Law, for consent to the issuance by said company of a first mortgage for ten million dollars (\$10,000,000); and a hearing having been given on said application before this Board in the city of New York on June 20, 1905, William S. Opdyke appearing for the applicant; and the purposes to which the proceeds of the said first mortgage are to be devoted appearing from the verified petition and the affidavit of W. L. M. Phelps herein; and it appearing that the owners of capital stock of the said company, to an amount equal to that required by the statute, have consented to the issuance of said first mortgage, it is

Ordered, That the Board of Railroad Commissioners consents and it does hereby consent to the issuance by the Albany and Susquehanna Railroad Company of a first mortgage for ten million dollars (\$10,000,000). (Case No. 3352.)

## Applications for a Certificate Under Section 59 of the Railroad Law.

### 1.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CITY INTERBOROUGH RAILWAY COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND A NECESSITY.

Determination. January 12, 1905.

The New York City Interborough Railway Company having applied to this Board for a certificate of public convenience and a necessity in respect of the routes described in its certificate of incorporation, excepting a portion of route one, as to which the application was withdrawn, and such application having been denied by this Board, and this Board having, at the request of the directors of said corporation, certified a copy of all maps, papers and evidence on file in the office of this Board, together with the findings of this Board, and the same having been presented to the Appellate Division of the Supreme Court for the First Department, and such Appellate Division having, for reasons stated in an order dated January 6, 1905, and in the opinion of the majority of said court filed December 23, 1904, directed this Board to issue a certificate of public convenience and a necessity in respect of the routes described in said certificate of incorporation numbered respectively one (1), two (2), three (3), four (4), six (6) and seven (7);

Now, in compliance with said order of said Appellate Division, the Board of Railroad Commissioners of the State of New York, certifies that public convenience and a necessity require the construction of the routes described in the certificate of incorporation of said New York City Interborough Railway Company, numbered respectively one (1), two (2), three (3), four (4), six (6) and seven (7), excepting only the portion of route one (1) described as follows:

Northerly on and along Corlear street or avenue from West Two Hundred and Thirty-eighth street to West Two Hundred and Forty-sixth street; thence northerly on and along West Two Hundred and Forty-sixth street to Barney street; thence northerly on and along Barney street to the street or lane connecting Barney street and Newton avenue; thence northeasterly on and along said street or lane to Newton avenue; thence northerly on and along Newton avenue to West Two Hundred and Fifty-third street; thence northerly and westerly on and along West Two Hundred and Fifty-third street to Riverdale avenue; thence northerly on and along Riverdale avenue to West Two Hundred and Fifty-fourth street; thence westerly on and along West Two Hundred and Fifty-fourth street to the Hudson river.

Said Board also certifies that the directors of said New York City Interborough Railway Company have complied with section 59 of the Railroad Law in respect to the publication at least once a week for three successive weeks, of the articles of association of said corporation in one or more newspapers in the county in which the road of said company is to be located, and has filed satisfactory proof thereof with this Board. (Case No. 2911.)

See page 186, first volume, 1904 report of this Board.

II.

IN THE MATTER OF THE APPLICATION OF THE AUBURN AND NORTHERN ELECTRIC RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. March 1, 1905.

On reading and filing the application of the Auburn and Northern Electric Railroad Company (proposing to build a street surface railroad from the intersection of North and Genesee streets in Auburn to the intersection of the Erie canal and Main street in Port Byron, a distance of eight miles) for a certificate, under section 59 of the Railroad Law, dated November 23, 1904, the articles of association of said company and due proof of the publication thereof; and after a public hearing on said application in the city of Auburn on February 16, 1905, Teller & Hunt appearing for the applicant; L. G. Morphy appearing for the New York Central and Hudson River Railroad Company, as to a proposed crossing of the railroad of said company by the applicant's railroad on State street, Auburn; T. M. Osborne appearing as to a portion of the route; William Nottingham appearing for the Auburn and Syracuse Electric Railroad Company, in favor of the application; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad, it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies in accordance with section 59 of the Railroad Law, that the conditions of said section have been complied with by said applicant company, the Auburn and Northern Electric Railroad Company, and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in the articles of association of said applicant company. (Case No. 3257.)

See page 192, first volume, 1904 report of this Board.

III.

IN THE MATTER OF THE APPLICATION OF THE ELMIRA AND CORNING SHORT LINE (STREET SURFACE RAILROAD COMPANY) FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

March 9, 1905.

This application was filed with this Board on April 30, 1904. Public hearings in the matter were held. Subsequently the application was withdrawn and the case closed. See Nos. VI, XV in this volume under this title. (Case No. 3142.)

IV.

IN THE MATTER OF THE APPLICATION OF THE ELECTRIC CITY RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. March 23, 1905.

The Board of Railroad Commissioners hereby certifies, under the provisions of section 59 of the Railroad Law, that the directors of The Electric City Railway Company have caused a copy of the articles of association of said company to be published in one or more newspapers in each county in which the road is proposed to be located at least once a week for three successive weeks and have filed satisfactory proof thereof with this Board and have made this application within six months after the completion of said publica-

tion; and the Board of Railroad Commissioners hereby certifies under the provisions of section 59 of the Railroad Law that public convenience and a necessity require the construction of the railroad of The Electric City Railway Company as proposed in its articles of association.

#### MEMORANDUM.

##### Appearances:

King, Leggett & Brown for the applicant.

Cohn & Chormann for the International Railway Company in opposition.

Pooley & Spratt for the New York Central and Hudson River Railroad Company, as to proposed crossings of that company's railroad by the applicant's railroad.

Moot, Sprague, Brownell & Marcy for the Erie Railroad Company, generally, and for Sara Sturdy, a property owner on Cherry street, in opposition.

Walter P. Cooke for the Buffalo, Thousand Islands and Portland Railroad Company.

Cromley & Gittens, generally, for Peter F. Porter, a property owner on First street and River street.

Eugene Cary for Mary L. Grant and other property owners on Cherry street, in opposition.

This application by The Electric City Railway Company for a certificate, under section 59 of the Railroad Law, was filed with this Board on June 2, 1904. Publication of the articles of association as required by said section has been made and the petition was filed within six months thereafter. The company proposes to build a street surface railroad to be operated by the overhead electrical trolley system of motive power in the city of Niagara Falls. The International Railway Company now operates an electric railroad in that city.

Public hearings on this application were held by this Board in the city of Niagara Falls on June 26, August 25 and 26 and November 18, and in the city of Buffalo on December 16, 1904. A large amount of testimony was taken. The length of railroad proposed is about eight miles. The principal appearance in opposition was that of the International Railway Company. The Board inspected the greater portion of the proposed route.

After consideration of the evidence we are of the opinion that public convenience and a necessity require the construction of the applicant's railroad. It is proposed in great part to be constructed in a part of the city now without such facilities. In view of the growth of Niagara Falls within recent years, the wide extent of territory covered by the buildings already erected and in process of erection and the probable future increase of population because of the development of additional power from the Niagara river, and of the fact that the main line of existing street railway which furnishes access to the outlying territory and accommodations for workmen going to and from their places of employment is separated from a large portion of this outlying territory by the numerous lines of steam railroad,—this line seems to us to be a necessity and will be a public convenience. The holding of inside lands for speculative purposes has resulted in a peculiar condition of affairs. It has led to the building up of comparatively thickly settled groups of houses at quite widely separated points, which compels workmen to reside a considerable distance from their places of employment. The building of the proposed line will afford facilities for these workmen to get to and from their work readily.

We are of the opinion that the company complied with the requirements of subdivision 13 of section 2 of the Railroad Law as to the payment of ten per cent. of its capital stock.

The certificate applied for has been issued. (Case No. 3156.)

## V.

IN THE MATTER OF THE APPLICATION OF THE SYRACUSE AND SOUTH BAY RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. April 7, 1905.

The Board of Railroad Commissioners hereby certifies, under the provisions of section 59 of the Railroad Law, that the directors of the Syracuse and South Bay Railway Company have caused a copy of the articles of association of said company to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks and have filed satisfactory proof thereof with this Board, and have made this application within six months after the completion of said publication; and the Board of Railroad Commissioners hereby certifies, under provisions of section 59 of the Railroad Law, that public convenience and a necessity require the construction of the railroad of the Syracuse and South Bay Railway Company as proposed in its articles of association, and also as shown by the maps on file in this office, the maps herein referred to being marked "Applicant's Exhibit No. 3, Jan. 26, 1905, Case No. 2262, K. F. C." and "Applicant's Exhibit No. 1 of Feb. 8, 1905, Case No. 2262, K. F. C."; which maps show a route amended under the statute.

## MEMORANDUM.

This application, by the Syracuse and South Bay Railway Company, for a certificate under section 59 of the Railroad Law, was filed with this Board on May 11, 1900. The applicant proposes to build a street surface railroad, to be operated by the overhead electrical trolley system of motive power, from Syracuse to South Bay on Oneida lake. Public hearings in the matter were given in the city of Syracuse on October 17 and November 12, 1900, and in the city of Albany on January 17, 1901. At these hearings Robert E. Drake and Tracy, Ayling & Chapman appeared for the applicant; T. E. Hancock, Louis L. Waters and Robert Avery appeared for the Syracuse and Oneida Lake Electric Railway Company (to which this Board had previously granted a certificate, under section 59 of the Railroad Law, as to a route from Syracuse to Oneida lake; which railroad has not been built); Willis Gleason appeared for the town of Salina and the village of Liverpool, in opposition; William L. Barnum appeared for the town of Cicero, in opposition. At the hearing on January 17, 1901, the hearing was closed. The applicant did not proceed before the Board with evidence of the *bona fides* of the enterprise and it was notified, under date of February 26, 1903, that "The matter of the application of the Syracuse and South Bay Railway Company for a certificate, under section 59 of the Railroad Law, has been closed on the books of this office, the applicant not having proceeded in the matter. It may be reopened on application by said company." On January 12, 1905, the applicant filed with the Board an amended petition on an amended route and the matter was reopened and hearings held on the amended petition and amended route at the office of the Board in Albany on January 26 and February 8, 1905, and in the city of Syracuse on February 17, 1905. At these hearings Robert E. Drake and William G. Tracy appeared for the applicant; Louis L. Waters appeared for the town board of the town of Clay, and for stockholders of the Syracuse and Oneida Lake Electric Railway Company and others, in favor of the application; Frederick T. Pierson appeared for the commissioners of highways of the towns of Clay and Salina, in favor of the application; Gerard C. Thorpe, highway commissioner of the town of Salina, appeared in favor of the application; Smith Soule appeared for the highway commissioner of the town of Cicero, in favor of the application; Willis Gleason appeared for the town board of the town of Salina, in favor of the application; Ray B. Smith also appeared for the highway commissioner of the town of Cicero; M. L. McCarthy appeared for the Louis Point Land and Improvement Company, in favor of the application; J. T. Durham appeared for the property owners at the east end of Oneida lake,

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in favor of the application; E. G. Morphy appeared for the New York Central and Hudson River Railroad Company, as to a proposed crossing of its railroad by the applicant's railroad; W. G. Tracy also appeared for petitioners named in a petition which he filed, in favor of the application; W. L. Barnum appeared for himself and for residents of Cicero, in opposition. The appearance of Mr. Barnum for himself was in reference to a claim for services rendered the Syracuse and Oneida Lake Electric Railway Company. It will be noted that at the hearings on the amended petition the only opposition was that which Mr. Barnum represented.

There is now no railroad between Syracuse and South Bay, and this Board, from the evidence, believes that public convenience and a necessity require the construction of this applicant's electric railroad. The evidence of public convenience and necessity is convincing. The proposed railroad will be a convenience and is a necessity to those living along its route and to those wishing to go from Syracuse to South Bay.

The certificate applied for has been issued. (Case No. 2262.)

See page 272, first volume, 1903 report of this Board. A writ of certiorari on the relation of W. L. Barnum and others was served on this Board in this matter, but before the return was made said proceeding was discontinued.

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### VI.

IN THE MATTER OF THE APPLICATION OF THE ELMIRA AND WAVERLY RAILWAY COMPANY (STREET SURFACE) FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

May 16, 1905.

This application was filed with this Board on March 18, 1905. Subsequently the application was withdrawn and the case closed. See Nos. III, XV, in this volume under this title. (Case No. 3311.)

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### VII.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, BATAVIA AND ROCHESTER ELECTRIC RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. June 15, 1905.

On reading and filing the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate, under section 59 of the Railroad Law, dated October 19, 1904, the articles of association of said company and due proof of the publication thereof; and after public hearings on said application in Batavia on November 17, 1904, in Rochester on December 14, 1904, in Buffalo on May 2, 1905, and in New York city on May 23, 1905, George L. Lewis and Safford E. North appearing for the applicant; Pooley and Spratt appearing for the New York Central and Hudson River Railroad Company, in opposition; Arthur E. Clark appearing for himself and other property owners in Batavia, in opposition; Henry B. Fisher appearing for property owners; John S. Rockwell appearing for the Buffalo, Rochester and Pittsburgh Railway Company; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad; it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies, in accordance with section 59 of the Railroad Law, that the conditions of said section have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association. (Case No. 3238.)

## VIII.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO AND ROCHESTER RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. June 15, 1905.

Appearances:

Bissell & Riley for the applicant.

Pooley & Spratt for the New York Central and Hudson River Railroad Company, in opposition, and for Mrs. Josephine Looney of Looneyville, a property owner, in opposition.

John S. Rockwell for the Buffalo, Rochester and Pittsburgh Railway Company, in opposition.

Frank Rumsey and Elisha Lee for the Pennsylvania Railroad Company (Western New York and Pennsylvania railway), in opposition.

Arthur E. Clark for himself, in opposition.

Norton, Penney & Sears, generally, for the International Railway Company.

George L. Lewis, generally, for the Buffalo, Batavia and Rochester Electric Railway Company.

Moot, Sprague, Brownell & Marcy for the Erie Railroad Company, generally, and as to the applicant's railroad crossing the Erie railroad.

This application, by the Buffalo and Rochester Railway Company, for a certificate under section 59 of the Railroad Law, was filed with this Board on January 6, 1905, the applicant proposing to build a street surface railroad to be operated by electricity from the easterly line of the village of Depew (Buffalo) to the southerly line of the city of Rochester, a distance of 60.61 miles, in the counties of Erie, Genesee, Livingston and Monroe, touching or passing through (beginning in Erie county) Looneyville (an unincorporated village), Mill Grove (an unincorporated village), Crittenden (an unincorporated village), Corfu (an incorporated village), Pembroke (an unincorporated village), Darien City (an unincorporated village), West Batavia (an unincorporated village), Batavia (an incorporated village), Stafford (an unincorporated village), Leroy (an incorporated village), Lime Rock (an unincorporated village), Caledonia (an incorporated village), Mumford (an unincorporated village), Clifton (an unincorporated village), Chili Centre (an unincorporated village), and Maplewood (an unincorporated village). About twelve miles of the route is on private right of way, the balance being in highways. Between Buffalo and Rochester there now exists the New York Central and Hudson River, the Erie, the Lehigh Valley, the Buffalo, Rochester and Pittsburgh, and the West Shore railroads. This Board has this day granted a certificate, under section 59 of the Railroad Law, to the Buffalo, Batavia and Rochester Electric Railway Company, which proposes to construct its railroad from Williamsville (Buffalo) along the main line of the New York Central to and through Batavia to Rochester. From near Buffalo to Batavia the proposed route of the applicant's railroad is in the same territory as that of the electric railroad just referred to. From Batavia the applicant's proposed route would leave the main line of the New York Central and passing through Leroy reach Rochester. There is now a branch of the New York Central railroad and a branch of the Erie railroad between Batavia and Leroy. Between Leroy and Rochester there is now the Buffalo, Rochester and Pittsburgh railway, direct line, and the Erie, the New York Central, and the Lehigh Valley railroads, indirect lines.

After consideration of the testimony, which is voluminous, this Board believes that public convenience and a necessity do not require the construction of the applicant's proposed railroad. There is a public convenience and necessity to be served by an electric railroad from Buffalo to Batavia, and this will be served by the line of the Buffalo, Batavia and Rochester electric railway. From Batavia to Leroy and from Leroy to Rochester there is no public convenience and necessity to be served by the construction of the applicant's proposed railroad. This territory is now served by the steam railroads named, upon which more trains can be operated if the near future

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should demonstrate that they should be operated for the accommodation of the public.

While the question of public convenience and a necessity is controlling, and the Board finds that such convenience and a necessity do not exist, it is of some moment to consider that the applicant proposed to construct four-fifths of its railroad in public highways. Such a railroad would not only impose a burden on the highways, but the operation of cars at high rates of speed which would follow its construction would be dangerous to other travel on the highway with little resulting benefit to the public. The Buffalo, Batavia and Rochester electric railway is to be constructed for the most part on private right of way.

Upon all the evidence and for the reasons given the certificate applied for by the applicant is hereby refused. (Case No. 3277.)

The Buffalo and Rochester Traction Company proposing to build a street surface railroad mainly on private right of way over the route which was proposed by the Buffalo and Rochester Railway Company has an application, under section 59 of the Railroad Law, pending before this Board at the time this report is written. See page 193, first volume, 1904 report of this Board.

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### IX.

#### IN THE MATTER OF THE APPLICATION OF THE ALBION AND ROCHESTER RAILWAY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. June 15, 1905.

On reading and filing the application of the Albion and Rochester railway for a certificate, under section 59 of the Railroad Law, dated October 7, 1904, the articles of association of said company and due proof of the publication thereof and after public hearings on said application in Albion on November 16, 1904, in Rochester on April 13, 1905, and in Albany on April 19, 1905, Charles B. Hill, A. K. Potter, Dudley Phelps and W. W. Storrs appearing for the applicant, W. C. Ramsdall appearing for the board of trustees of the village of Albion, in favor of the application; Bert W. Brown appearing for the village of Spencerport, in favor of the application; Isaac S. Signor appearing for the village of Holley, in favor of the application; A. H. Harris and Edward Harris, Jr., appearing for the New York Central and Hudson River Railroad Company, in opposition; F. P. Kimball appearing for the Buffalo, Niagara Falls and Rochester Railway Company, in opposition; John S. Rockwell appearing for the Buffalo, Rochester and Pittsburgh Railway Company, as to proposed crossings by the applicant's railroad of said railway; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant's railroad, it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies, in accordance with section 59 of the Railroad Law, that the conditions of said section have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association. (Case No. 3224.)

This company has been succeeded by the Buffalo, Lockport and Rochester Railway Company. See page 179, first volume, 1905 report of this Board as to the Albion Electric Railway.



## X.

IN THE MATTER OF THE APPLICATION OF THE ALBION AND LOCKPORT RAILWAY  
FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. June 15, 1905.

On reading and filing the application of the Albion and Lockport railway for a certificate, under section 59 of the Railroad Law, dated October 7, 1904, the articles of association of said company and due proof of the publication thereof; and after public hearings on said application in Albion on November 16, 1904, in Rochester December 15, 1904, and in Albany on April 19, 1905, Charles B. Hill, A. K. Potter and Dudley Phelps appearing for the applicant; W. C. Ramsdell appearing for the board of trustees of the village of Albion, in favor of the application; Albert L. Cole appearing for the board of trustees of the village of Medina, in favor of the application; George F. Thompson appearing for the board of trustees of the village of Middleport, in favor of the application; A. Edmund Lee appearing for the common council of the city of Lockport; A. H. Harris appearing for the New York Central and Hudson River Railroad Company, in opposition; F. P. Kimball appearing for the Buffalo, Niagara Falls and Rochester Railway Company, in opposition; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad; it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies, in accordance with section 59 of the Railroad Law, that the conditions of said sections have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association. (Case No. 3223.)

This company has been succeeded by the Buffalo, Lockport and Rochester Railway Company. See page 179, first volume, 1905 report of this Board as to the Albion Electric railway.

## XI.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK AND JERSEY  
RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD  
LAW.

Determination. June 20, 1905.

On reading and filing the application of the New York and Jersey Railroad Company for a certificate, under section 59 of the Railroad Law, dated May 23, 1905, the articles of association of said company and due proof of the publication thereof; and after a public hearing on said application in the city of New York on June 20, 1905, Stetson, Jennings & Russell appearing for the applicant and no one appearing in opposition to the application; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad; it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies, in accordance with section 59 of the Railroad Law, that the conditions of said section have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association. (Case No. 3355.)

XII.

IN THE MATTER OF THE APPLICATION OF THE ERIE AND JERSEY RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. June 28, 1905.

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies, under section 59 of the Railroad Law, that the conditions of said section have been complied with by the applicant, Erie and Jersey Railroad Company, and that public convenience and a necessity require the construction of the railroad of the applicant, Erie and Jersey Railroad Company, as proposed in its articles of association. (Case No. 3359.)

XIII.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO, NIAGARA FALLS AND ROCHESTER RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. July 15, 1901.

The Board of Railroad Commissioners hereby certifies, under the provisions of section 59 of the Railroad Law, that the directors of the Buffalo, Niagara Falls and Rochester Railway Company have caused a copy of the articles of association of said company to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks, and have filed satisfactory proof thereof with this Board, and have made this application within six months after the completion of said publication; and the Board of Railroad Commissioners hereby certifies that public convenience and necessity require the construction of the railroad of the Buffalo, Niagara Falls and Rochester Railway Company as proposed, in the articles of association of said company.

MEMORANDUM.

Appearances:

James M. E. O'Grady, T. D. Wilkin, Frederick St. John and Patrick King, for the applicant.

A. H. Harris, for the New York Central and Hudson River Railroad Company, in opposition; H. L. Sprague and H. A. Taylor, for the Erie Railroad Company, in opposition; Morris Cohn, Jr., for the Buffalo and Lockport railway and the Buffalo and Niagara Falls Electric railway, in opposition; Walter P. Cooke, for the Lehigh Valley Railroad Company.

This application was filed with this Board on September 28, 1900. It asks the Board for a certificate, under section 59 of the Railroad Law, that the conditions of that section have been complied with by the applicant and that public convenience and a necessity require the construction of the railroad of the applicant. Hearings in the matter were given in the city of Rochester on January 25, 26, February 14, 15, March 29, 30 and April 15, and in the city of Albany on March 13, and May 8, 1901. Many witnesses,—farmers, produce dealers and residents along the applicant's line were called by the applicant and testified in its favor, and other witnesses were called in opposition. No petition under section 59 has ever been more exhaustively tried out, in point of elaborateness of testimony and minuteness of detail, than was the case in the hearing and examination of this proceeding; besides which a careful examination and report of the route were made by one of the Board's official inspectors, and the commissioners also personally examined nearly sixty miles of the main line, by driving over it—to wit, from Rochester, via the Ridge road, the Checkered Tavern road, Sampson's road, the Settlement road and other shorter highways, into the city of Lockport. In favor of the petition and the project

the Board finds that the route selected for the projected railway is probably the best in the State of any corresponding mileage. The Ridge road is very closely settled on the easterly twenty-five miles of its length and fairly well settled on its westerly portion. It is bordered by a highly productive farming country for its entire length and is marked by hamlets at intervals of two or three miles. The route of the proposed railroad is wholly in the highway, on its south side, for the entire length of the Ridge road. This, in the judgment of the Board, is ordinarily an objectionable way of using and occupying the public roads. The Board is of the opinion that the best and safest and most business-like construction of electric roads, is that plan which puts them on private right of way, parallel and contiguous to main highways. In behalf of this project it is to be said that the Ridge road is of a general width of 90½ feet; that the traveled or beaten road or path, occupies on the average only about 30 feet of the general width, and that there is ample room for an electric railway along the south side of the Ridge road. The people living upon and adjacent to the Ridge road and in the contiguous villages, lying within a belt of two miles, north and south of the great highway, are absolutely unanimous in the desire for this electric road and in the opinion that it will greatly serve their convenience and meet their urgent needs for cheap and frequent transportation service for both persons and products. The Board is convinced that this desire and belief of the people are well founded. While there are many stations upon the Niagara Falls branch of the New York Central and Hudson River railroad, they are several miles distant from points on the Ridge road directly opposite them, and, of course, longer distances from dwellings on the Ridge road, not situated directly opposite the stations. A person dwelling upon the Ridge road and desiring to go to a railroad station, on the Niagara Falls branch, drives from his home to the intersecting road nearest his objective point and then proceeds south, crossing the Erie canal on the way to the station. The same condition of affairs similarly affects people desiring to reach the Rome, Watertown and Ogdensburg railroad, except that no canal intervenes. The population which would be accommodated by an electric railroad upon the Ridge road approximates many thousands. It is easily conceivable, from the facts in this case and from the known experience of other electric railroads in this and other states built through what may be called farming communities, that such a road in this community would be of so much convenience as to amount to a necessity under existing conditions of life. The domestic and business needs of the community (which may be supplied at the city of Rochester on the easterly end of the line, and at Lockport and Buffalo, on the other), as well as its need for markets for its own products, would, through the construction of an electric railroad as proposed, be supplied and the convenience of the residents furthered in a manner which is not, and in the nature of things cannot be, provided by the existing steam railroads. The means of individual communication from one portion of the Ridge road to another which would be furnished by an electric railroad, also influences the Board in its opinion. It may be said, too, while it is unlikely, were such a railroad constructed, that many persons from outside the purely local community living along the Ridge road, would ride from Rochester to Lockport or from Lockport to Rochester on the proposed railroad, it is likely that many persons living in Rochester and Lockport, and perhaps in other places, would find their necessities for reaching points on the Ridge road and the convenience of such access, largely furthered through the existence of the proposed railroad. The work of constructing such a line is simple and nowhere presents any difficult or costly engineering problems. There will be no grade crossings of steam railways, though it is true that there will be the ordinary modern danger at the intersections of highways. But electric railways are one of the newly developed necessities of modern life; they have come to stay; they make crossings at every intersecting street in our cities and villages; they kill and maim people, but no one would hold that to be a sufficient reason for excluding them from cities. The rural populations will become accustomed to them and will cultivate and acquire

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reasonable caution. Horses have become generally familiar with the electric railway car, just as they have with the bicycle and as they must and will soon learn not to fear the mechanical or automobile wagon. The consideration of the mass of testimony offered in this case, its technical, contradictory and intricate character; the importance of the project as embracing the longest electric railway line in the State and, therefore, the financial ability of the projectors and their associates to build and equip the line have required and received patient examination at the hands of the Board. Some question was raised on the latter subject by the opponents of the scheme, but the Board is reasonably assured of the financial ability of the projectors, and, apart from that, believes that the project is itself so substantial that those who control it will be easily able to command the requisite funds.

The Board, for these reasons, grants the petition. (Case No. 2341.)

This certificate was granted and memorandum written in 1901, but were not issued until August 14, 1905, because the organization tax of the company was not paid until that time. Writ of certiorari in this matter, on the relation of the New York Central and Hudson River Railroad Company has been served on this Board, but at the time of writing this report the return has not been made.

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### XIV.

#### IN THE MATTER OF THE APPLICATION OF THE DELAWARE AND EASTERN RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. July 28, 1905.

On reading and filing the application of the Delaware and Eastern Railroad Company for a certificate under section 59 of the Railroad Law, verified February 18, 1905, the articles of association of said company and due proof of the publication thereof; and after public hearings on said application in the city of New York on March 15, April 7 and June 21, in the city of Albany on March 23 and July 6, and in the city of Kingston on June 7, 1905, Walter E. Cooke and H. D. Hinman appearing for the applicant; H. J. Williams appearing for property owners in favor of the application, C. E. Hulbert, a property owner, appearing in favor of the application, E. A. Holmes appearing in favor of the application, J. Turnboldt appearing in favor of the application, C. A. Sanford appearing in favor of the application, Monroe Williams appearing in favor of the application; John B. Kerr appearing from the New York, Ontario and Western Railway Company in opposition to the application, Amos Van Etten appearing for the Ulster and Delaware Railroad Company in opposition to the application; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad; it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies in accordance with section 59 of the Railroad Law, that the conditions of said section have been complied with by the applicant company, the Delaware and Eastern Railroad Company, and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association. (Case No. 3302.)

XV.

IN THE MATTER OF THE APPLICATION OF THE ELMIRA AND WAVERLY RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

August 24, 1905.

This application was filed with this Board on August 10, 1905, and was dismissed on August 24, the articles of association being defective. See Nos. III, VI in this volume under this title. (Case No. 3372.)

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XVI.

IN THE MATTER OF THE APPLICATION OF THE GLEN COVE RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. August 29, 1905.

On reading and filing the application of The Glen Cove Railroad Company for a certificate under section 59 of the Railroad Law, dated June 29, 1905, by Edward Roche, president of said company, the articles of association of said company and due proof of the publication thereof, a map of the proposed amended route of said railroad; and after a public hearing on said application in the city of New York on August 29, 1905, J. F. Keany appearing for the applicant; Edward M. Underhill, highway commissioner, and James H. Cox, justice of the peace, of the town of Oyster Bay, Nassau county, and D. M. Munger a property owner and Joseph Rell appearing in favor of said application; and after hearing evidence and arguments, and after reading and filing a statement of extension of route of the Glen Cove Railroad Company and after reading and filing a statement of certificate of change of route of the Glen Cove Railroad Company, it is

Ordered, That said application be and the same is hereby granted and the Board of Railroad Commissioners hereby certifies in accordance with the provisions of section 59 of the Railroad Law that the conditions of said section have been complied with by said applicant company, the Glen Cove Railroad Company, and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association and as changed and shown by a map survey and profile of an amended route on file in this office marked "Applicant's Ex. No. 1, August 29, 1905. Case No. 3378. J. J. F." (Case No. 3378.)

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XVII.

IN THE MATTER OF THE APPLICATION (SECOND APPLICATION) OF THE COOPERTOWN AND MOHAWK VALLEY RAILWAY COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

October 10, 1905.

This application (second application) was filed with this Board on August 17, 1905. On August 21, 1901, this Board issued to this company a certificate under section 59 of the Railroad Law. It appeared, in 1905, that the articles of association had not been filed in the office of the clerk of the county of Otsego (in which county the entire route of the company is located) and the company made application for a new certificate. After hearings on said second application (at which opposition developed), the applicant on October 10 asked leave to withdraw this application without prejudice to the making of another application, which leave was granted by this Board. At the time of writing this report the other application has not been made.

See page 188, first volume, 1901 report of this Board. (Case No. 2500.)

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### XVIII.

IN THE MATTER OF THE APPLICATION OF THE TUNESASSA AND BRADFORD RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

Determination. October 31, 1905.

On reading and filing the application of the Tunesassa and Bradford Railroad Company for a certificate under section 59 of the Railroad Law, dated September 28, 1905, by D. H. Miller, president of said company, the articles of association of said company and due proof of the publication thereof, a map of the proposed route of said railroad; and after a public hearing on said application in the city of Elmira on October 24, 1905, Cary, Rumsey and Hastings appearing for the applicant and no one else appearing; and after hearing evidence and arguments, and it appearing that the conditions of section 59 of the Railroad Law have been complied with by said applicant company and that public convenience and a necessity require the construction of said applicant company's railroad, it is

Ordered, That said application be and the same is hereby granted, and the Board of Railroad Commissioners hereby certifies in accordance with section 59 of the Railroad Law, that the conditions of said section have been complied with by the applicant company, the Tunesassa and Bradford Railroad Company, and that public convenience and a necessity require the construction of said applicant company's railroad as proposed in its said articles of association. (Case No. 3425.)

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### XIX.

IN THE MATTER OF THE APPLICATION OF THE INTERVALE TRACTION COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

December 8, 1905.

The certificate was issued. The appellate division, third department, reversed the action of the Board. The court's opinion is printed in this volume under the next title. See page 185, first volume, 1904 report of this Board. There has been no appeal to the court of appeals. (Case No. 2939.)

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### XX.

IN THE MATTER OF THE APPLICATION OF THE BINGHAMTON AND SOUTHERN RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

December 8, 1905.

The certificate was issued. The appellate division, third department, upheld the certificate. The court's opinion is printed in this volume under the next title. See page 186, first volume, 1904 report of this Board. There has been no appeal to the court of appeals. (Case No. 3028.)

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### XXI.

IN THE MATTER OF THE APPLICATION OF THE BUFFALO FRONTIER TERMINAL RAILROAD COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

December 8, 1905.

August 10, 1904, this Board refused this company the certificate applied for. After the lapse of a year's time the company made, in accordance with

the section, another application to this Board for such a certificate, which application is at the time of writing this report pending before the Board. See page 190, first volume, 1904 report of this Board. (Case No. 3082.)

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XXII.

IN THE MATTER OF THE APPLICATION OF THE NIAGARA TRANSFER RAILWAY  
COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

December 8, 1905.

The certificate was issued. The appellate division, third department, reversed the action of the Board. The court's opinion is printed in this volume under the next title. At the time of writing this report it appears that, if allowed, this matter may be appealed to the court of appeals. See page 191, first volume, 1904 report of this Board. (Case No. 3114.)

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XXIII.

IN THE MATTER OF THE APPLICATION OF THE NORTHERN SHAWMUT RAILROAD  
COMPANY FOR A CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.

December 8, 1905.

A writ of certiorari on behalf of a property owner who appeared in opposition was served on this Board and the return was made. At the time of writing this report the matter has not been argued before the appellate division, third department. See page 193, first volume, 1904 report of this Board. No further note will be made as to this certificate in future reports unless the matter is presented to the appellate division. (Case No. 2833.)

## Decisions of Courts as to Questions Arising Under Section 59 of the Railroad Law.

### I.

#### APPELLATE DIVISION, SUPREME COURT, THIRD DEPARTMENT.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. ERIE RAILROAD COMPANY, Relator,  
v. THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NEW YORK and  
GEORGE W. DUNN, AND OTHERS, AS RAILROAD COMMISSIONERS OF THE STATE OF  
NEW YORK, AND BEING THE MEMBERS OF SAID BOARD, AND BINGHAMTON AND  
SOUTHERN RAILROAD COMPANY, Respondents.

(101 App. Div. 251.)

CERTIORARI issued out of the Supreme Court and attested on the 25th day of June, 1904, directed to the Board of Railroad Commissioners of the State of New York and to George W. Dunn and others, as Railroad Commissioners, etc., commanding them to certify and return to the office of the clerk of the county of Albany all and singular their proceedings had in the matter of granting to the Binghamton and Southern Railroad Company a certificate under section 59 of the Railroad Law (Laws of 1890, chap. 565, added by Laws of 1892, chap. 676, and amended by Laws of 1895, chap. 545.)

PARKER, P. J.:

The several objections taken by the relator in this proceeding cannot, in my judgment, be sustained.

The certificate of incorporation of the Binghamton and Southern Railroad Company fixes the western terminus of its proposed road at the point where the Apalachin creek crosses the boundary line between the States of New York and Pennsylvania, and at the northern terminus of the road of the "Pittsburg, Binghamton and Eastern Railroad Company" and the eastern terminus at "the city of Binghamton." It gives the length of the proposed road as about eighteen miles and fixes the capital stock at \$180,000. Upon the hearing before the Board of Railroad Commissioners it appeared that the distance from such western terminus to the city of Binghamton, viz., the western boundary thereof, is fifteen and three-tenths miles, and that, if the road were extended from such latter point through the city of Binghamton, along a line that had been surveyed and mapped, to a certain point in Robinson street near the Delaware and Hudson Railroad, it would be about four miles longer. In that event the total length to Robinson street would be nineteen and three-tenths miles.

The first objection taken is that, because the proposed line is in fact nineteen and three-tenths miles, the capital stock should have been fixed at \$193,000 instead of \$180,000, and that there should have been paid in \$19,300 instead of \$18,000, and that for this reason the certificate is void.

But the line as proposed in the articles of association extends no further east than the "city of Binghamton," and the certificate granted to it by the Board of Railroad Commissioners is for the road as proposed in such articles. A complete road is proposed in such articles of association and certified as necessary, etc., and if under it a road cannot be built to Robinson street (and whether one can or cannot we express no opinion now), nevertheless such articles are not void on that account.

The next objection is that the Board acquired no jurisdiction to grant the certificate required by section 59 of the Railroad Law (Laws of 1890, chap. 565, added by Laws of 1892, chap. 676, and amended by Laws of 1895, chap. 545), because the articles of association had not been published in both of the counties of Broome and Tioga, into which the proposed road extended before the application for such certificate was made to such Board.

But, first, the statute does not seem to require it. Secondly, the articles of association were published for three weeks in each of such counties before any hearing was had before the Board. A formal application by petition was made to the Board for such a certificate on or about November 13th but no action was then taken, except to adjourn the matter indefinitely. By December 24th, publication having been completed in both counties, the Board fixed the 14th of January, 1904, as the time for the first hearing on such application; and notice of that hearing was published in those counties and given as required by such Board. Thus the required publication had been made before any action whatever had been taken on the application, and the requirement and purpose of the statute in this respect was fully observed.

The objection that the Board of Railroad Commissioners has no authority to grant a certificate for a part of a proposed route, is not presented by the facts of this case. The road which the Board has certified as necessary, etc., is the one



proposed in its articles of association. As suggested above, all that we may assume the company proposes to build is specified therein, viz., eighteen miles from its western terminus to the city of Binghamton, and all that is specified therein is certified to be required by public convenience and a necessity; hence this objection is not well taken.

The objection that the evidence does not warrant the conclusion that public convenience and a necessity require the proposed road, is not sustained, for the reasons stated in *People ex rel. New York, N. H. & H. R. E. Co. v. Comrs.* (81 App. Div. 242, 249).

The determination of the Board of Railroad Commissioners, therefore, should be confirmed with fifty dollars costs and disbursements.

Determination of the Railroad Commissioners unanimously confirmed, with fifty dollars costs and disbursements.\*

## II.

### APPELLATE DIVISION, SUPREME COURT, THIRD DEPARTMENT.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. JAMES AMM AND OTHERS AND THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY AND OTHERS, Relators, v. THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NEW YORK AND OTHERS, Respondents.

(103 App. Div. 123.)

CERTIORARI issued out of the Supreme Court and attested on the 27th day of August, 1904, directed to the Board of Railroad Commissioners of the State of New York and others, commanding them to certify and return to the office of the clerk of the county of Albany all and singular their proceedings had in granting the Niagara Transfer Railway Company a certificate of public convenience and a necessity under section 59 of the Railroad Law.

HOUGHTON, J. :

The Board of Railroad Commissioners granted to the Niagara Transfer Railway Company a certificate of public necessity and convenience, under section 59 of the Railroad Law, for the building of a steam railroad from the outskirts of the city of Buffalo to the village of Tonawanda, a distance of some seventeen miles.

The certificate is not claimed to have been issued because public convenience demanded greater direct facilities between the city of Buffalo and the village of Tonawanda.

The road is projected as a freight switch road, and its primary purpose is the development for manufacturing and shipping purposes of a tract of land of about 2,200 acres, having a water frontage on the Niagara river of about four miles. Two lines of railway are proposed, one along the bank of the river and the other a few hundred feet back and near the Erie canal, the one cutting off the adjacent lands from the canal and both cutting off the lands from the river.

The owners of more than 62 per cent. of this tract, representing more than 66 per cent. of its entire water frontage, filed remonstrances against the granting of the certificate, and have brought this proceeding to set it aside.

It is not claimed there is any freight now in sight for the proposed road, nor will there ever be any passengers of any amount. The reason urged for the necessity of the road and the propriety of the certificate is that its construction will afford means of transportation for factories to be established on the 2,200-acre tract, and for the large shipping interests which it is hoped a development of the water front will bring.

In *People ex rel. Cluett, Peabody & Co. v. Commissioners* (95 App. Div. 38) this court held that a freight railroad injurious to the owners of the property through which it ran ought not to be thrust upon them for their convenience against their protest.

The reasons which impelled us to set aside the certificate in that case apply with much increased force in the present. Here the lands are agricultural lands, wholly unimproved, having a water frontage concededly of value and possibly in time of great value.

The general public is not interested in the development and improvement of these lands except in an economic way. All improvements benefit the public, but we know of no rule of law which can compel an individual or private corporation to develop or improve his property for the benefit of the general public. The several owners of this tract of land have a right to develop it or to hold it for speculative purposes, and a railway which cuts off the most valuable rights in connection with their land, and diminishes or practically destroys its value as a whole, should not be thrust upon them against their will. It is true that the protest of an individual owner should not prevent the building of a railroad called for by public necessity and which would serve the public convenience. Here no necessity is to be served except such as may grow up on these lands after manufacturing plants shall be established. The situation is much different from the projecting of a railway through a vast undeveloped country. In such a case individual rights are insignificant compared with the general good. In the present case the general good is insignificant compared with individual rights.

\* This case was not appealed to the Court of Appeals. For determination of this Board in this matter, see p. 186, 1st vol. 1904, report of this Board.

If a freight railroad is desirable through this tract of land it should be located with some regard, at least, to the wishes of its owners. The testimony is overwhelming that the proposed road meets no public necessity except such as may hereafter be developed upon these lands, and that the cutting off of the water frontage would be a very great damage to the owners, exceedingly difficult, if not impossible, to be ascertained by condemnation in the present undeveloped state of the property.

In view of the strenuous objection of the large majority of the owners of the property, we think the evidence did not justify the granting of the certificate of necessity and convenience.

The determination of the Railroad Commissioners should be reversed upon the law and the facts, with fifty dollars costs and disbursements to the relators.

All concurred; SMITH, J., not voting.

Determination of the Railroad Commissioners reversed upon law and facts, with fifty dollars costs and disbursements of all relators.

It may be that, if allowed, this case will be appealed to the Court of Appeals. See p. 191, 1st vol. 1904 report of this Board.

### III.

#### APPELLATE DIVISION, SUPREME COURT, THIRD DEPARTMENT.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. ERIE RAILROAD COMPANY, Relator,  
v. THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NEW YORK AND  
OTHERS, BEING MEMBERS THEREOF, AND INTERVALE TRACTION COMPANY, Respondents.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. GEORGE R. CONKLIN AND OTHERS,  
Relators, v. THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NEW YORK  
AND OTHERS, BEING MEMBERS THEREOF, AND INTERVALE TRACTION COMPANY,  
Respondents.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. HENRY M. LEONARD AND OTHERS,  
Relators, v. THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF NEW YORK  
AND OTHERS, BEING MEMBERS THEREOF, AND INTERVALE TRACTION COMPANY,  
Respondents.

(105 App. Div. 273.)

THREE writs of certiorari issued out of the Supreme Court and attested in the first proceeding on the 7th day of April, 1904, and in the other two proceedings on the 13th day of April, 1904, directed to the Board of Railroad Commissioners of the State of New York and others, being the members thereof, commanding them to certify and return to the office of the clerk of the county of Albany all and singular their proceedings had in granting to the Intervale Traction Company a certificate of public convenience and a necessity under section 59 of the Railroad Law.

On the 4th day of June, 1904, the Intervale Traction Company was granted leave to appear as a party defendant in the proceedings, and by stipulation but one return was made by the Board of Railroad Commissioners and the three proceedings were heard together.

CHASE, J.:

On an application to the Board of Railroad Commissioners by an alleged railroad corporation for a certificate of public convenience and a necessity under section 59 of the Railroad Law (Laws of 1890, chap. 565, added by Laws of 1892, chap. 676, and amended by Laws of 1895, chap. 545) it is the duty of the Board of Railroad Commissioners to make inquiry into the prior proceedings of the alleged railroad company to ascertain and determine whether such alleged railroad company is of a character which the law recognizes, and to which it contemplated that a certificate should be given. (*People ex rel. Long Island R. R. Co. v. Board of R. R. Comrs.*, 75 App. Div. 108; *Matter of Kings, Queens & Suffolk R. R. Co.*, 8 id. 241.)

A valid and sufficient certificate of incorporation of the Intervale Traction Company lies at the very foundation of its right to make the application to the Board of Railroad Commissioners. The certificate of incorporation must have been executed and acknowledged by fifteen or more persons and filed as provided by statute. (*People ex rel. Long Island R. R. Co. v. Board of R. R. Comrs.*, *supra.*) If not so executed and acknowledged, the determination of the Board of Railroad Commissioners must be reversed. (*People ex rel. Long Island R. R. Co. v. Board of R. R. Comrs.*, *supra.*) The certificate of incorporation of said company was signed by sixteen persons. Concededly, ten of such persons duly acknowledged the same. The claimed acknowledgment of three of the other six persons signing said certificate of incorporation is included in a certificate, as follows: "On this 6th day of January, 1902, before me, the subscriber personally came Charles A. Burt and Albert S. De Veau, and on this 7th day of January, 1902, before me personally came Frank W. Harrington, and on this 14th day of January, 1902, before me personally came Charles D. Hobbs and Charles W. Griffith, each to me known and known to me to be the persons described in and who executed the foregoing certificate for the purposes therein set forth, and they severally duly acknowledged to me that they executed the same."

Said Albert E. De Vean and Frank W. Harrington, so named in such certificate of acknowledgment, are in no way named in the certificate of incorporation, and they did not, nor did either of them, sign the same. The certificate shows that the notary acted three times, and each time on a different day. We do not see how his acts and certificate could have been inadvertent. Whether said certificate was a part of some other instrument and wrongfully annexed to the certificate of incorporation, or whether by some unexplained mistake the notary certified to acknowledgments never taken by him does not appear, but there is a yet more serious trouble arising from the fact that the acknowledgments of the remaining three persons who signed said certificate of incorporation were taken before one of the other of said sixteen persons signing the same, which person signed the certificates of acknowledgment as a notary.

The notary so taking the acknowledgment of three of his fellow-incorporators was one of the members of a committee of incorporators, acting as its treasurer and was subsequently elected treasurer of the alleged corporation.

The relators contend that the certificate of incorporation is insufficient in law to create a corporation by reason of the fact that fifteen or more persons did not *duly* acknowledge such certificate. (See Railroad Law, §2, as amended by Laws of 1892, chap. 676.) If the acknowledgment of three of the persons who signed said certificate of incorporation taken before one of the others so signing the same is a nullity, the contention of the relators must prevail.

It was held by this court in the case of *Armstrong v. Combs* (15 App. Div. 246) that a party to the record is disqualified from taking an acknowledgment of an instrument. In that case one of the members of a partnership took the acknowledgment of the grantor to an assignment of a mortgage to the partnership in its firm name, and this court then said: "The object of acknowledgment and record is to make title secure and prevent frauds in conveyancing as well as to furnish proof of the due execution of conveyances. A history of the practice on that subject in this State will be found in *Van Cortlandt v. Tozer* (17 Wend. 338). The early acts will be found in 3 Revised Statutes (1st ed.), appendix, 5-46. It is very plain that when the right to acknowledge was provided for, it was not contemplated that the officer could be one of the parties to the instrument. The object of the act and the manner in which it was required to be done were utterly inconsistent with such an idea. A good deal of the formality has since disappeared, but the object remains, and the law should be construed in the light of its original object and scope. The statute does not in terms say that a grantee may or may not be the acknowledging officer. It should not be deemed to give that right without an express provision to that effect. 'A thing within the letter is not within the statute if contrary to the intention of it.' (*People v. Utica Ins. Co.*, 15 Johns. 358; *Riggs v. Palmer*, 115 N. Y. 506; *Smith's Comm. on State Const. Law*, § 701.)

"It should be held, I think, that the acknowledgment before one of the assignees was a nullity. He was a party to the record, and, therefore, disqualified."

In that case it was stated that in other States it is quite uniformly held that an acknowledgment by the grantor taken before the grantee is a nullity, and many authorities are cited and many other authorities could be cited to the same effect.

If three of the sixteen persons signing the certificate of incorporation could duly acknowledge the same before one of the other persons signing such certificate, then the acknowledgment of all the signers could have been taken before fellow-incorporators, and the execution of the certificate of incorporation would be wholly apart from the official act of any disinterested person and its execution would be but little more sacred than if the acknowledgments were wholly omitted.

A person authorized to take acknowledgments could as a grantee forge the name of the grantor, and add thereto, in his official capacity a certificate of acknowledgment and then have such fraudulent instrument of conveyance recorded.

So, too, such person being the owner with others as tenants in common of property, could sign for himself and acknowledge a conveyance, and then forge the signature of the other owners and add thereto in his official capacity a certificate of acknowledgment as to them, and deliver such conveyance to a grantee and perhaps secure the proceeds of such fraudulent conveyance. The immediate results of a fraud committed by a cograntor might be greater than in the case of a fraud committed by a grantee. In a certificate of incorporation or other paper where an acknowledgment of the parties signing the same is necessary, a fraud could be committed by one of the signers by a false certificate of acknowledgment of persons actually signing the certificate or instrument, or by the forgery of some of the names, and a certificate of acknowledgment as to such forged names, and although it might be difficult to obtain much practical benefit from such fraud in a certificate of incorporation before the same could be discovered, yet as the Legislature has seen fit to make the certificate of incorporation dependent on its being signed by a specific number of persons, and on its being duly acknowledged by them, I can see no distinction or reason that requires that an acknowledgment of a grantor taken by a grantee shall be held a nullity, and that would permit or uphold an acknowledgment taken by one of several grantors of a conveyance or one of several signers of an instrument in which all are interested. Because of the probative force accorded to the certificate of acknowledgment, as well as the usually important consequences of the instrument itself, public policy forbids that the act of taking and certifying the acknowledgment should be exercised by a person financially or beneficially interested in the transaction. (1 Cyc. 553.)

It is a general rule that an officer who is a party to a conveyance or interested therein may not take the acknowledgment of the grantor, and an acknowledgment so taken would be a nullity so far as third persons are concerned. (1 Am. & Eng. Ency. of Law, 2d ed., 493.)

We are not aware of any authority in this or other States upholding an acknowledgment taken by a person financially or beneficially interested in and a party to the

conveyance or instrument of which it is a part. (See 1 Cent. Dig. 868, and subsequent Am. Dig. Annuals.) All of the signers of a certificate of incorporation have a very material financial and other interest in upholding the certificate. The purpose of an acknowledgment is to require greater formality in the execution of an instrument, and not only by requiring greater formality, but by thus obtaining an official act of a disinterested person, prevent, so far as possible, the perpetration of fraud.

It is unnecessary to consider the other serious objections raised by the relators, as it is assumed that if the promoters of the proposed railroad commence *de novo*, that they will be more deliberate and careful in their proceedings.

The determination of the Board of Railroad Commissioners should be reversed.

All concurred.

Determination of the Railroad Commissioners reversed, without costs.

This case was not appealed to the Court of Appeals. (See p. 185, 1st vol. 1904, report of this Board.)

## Abandonment of Part of Route.

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### 1.

IN THE MATTER OF THE APPLICATION OF THE INTERNATIONAL RAILWAY COMPANY, UNDER SECTION 103 OF THE RAILROAD LAW, FOR APPROVAL OF A DECLARATION OF ABANDONMENT OF A PORTION OF THE ROUTE OF ITS RAILWAY IN THE CITY OF BUFFALO.

Determination. May 2, 1905.

This application, under section 103 of the Railroad Law, by the International Railway Company, was filed with this Board on March 30, 1905. It asks for approval by the Board of a declaration of abandonment of that portion of the route of said company's railway in the city of Buffalo in South Division street, between Cedar street and Spring street; in Spring street, between South Division street and William street; in William street, between Spring street and Mortimer street; in Mortimer street, between William street and Peckham street; in Peckham street, between Mortimer street and Smith street; in Smith street, between Peckham street and Broadway; in Broadway, between Smith street and Herman street; and in Herman street, between Broadway and Best street. A public hearing on this application, after public notice and notice to local authorities, was held by this Board in the city of Buffalo on May 2, 1905. Porter Norton appeared for the applicant. No one appeared in opposition. After hearing arguments the hearing was closed. The petition alleges that the petitioner has obtained the consent of the property owners abutting upon the portion of its route desired to be abandoned as aforesaid and the petitioner has also obtained the consent of the city of Buffalo to said abandonment.

Under the circumstances as set forth above, this Board is of the opinion that it should approve the declaration of abandonment of that portion of the route named, and it is hereby

Ordered, That said application be and is hereby granted and that the approval of this Board of a declaration of abandonment of that portion of the route of the railway of the International Railway Company in the city of Buffalo in South Division street, between Cedar street and Spring street; in Spring street, between South Division street and William street; in William street, between Spring street and Mortimer street; in Mortimer street, between William street and Peckham street; in Peckham street, between Mortimer street and Smith street; in Smith street, between Peckham street and Broadway; in Broadway, between Smith street and Herman street; and in Herman street, between Broadway and Best street,—shall be endorsed upon the declaration of abandonment adopted by the directors and stockholders of said company, as provided by section 103 of the Railroad Law. (Case No. 3318.)

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### 11.

IN THE MATTER OF THE APPLICATION OF THE UNITED TRACTION COMPANY, UNDER SECTION 103 OF THE RAILROAD LAW, FOR APPROVAL OF A DECLARATION OF ABANDONMENT OF A PORTION OF THE ROUTE OF ITS RAILROAD IN GREEN ISLAND AND COHOES.

June 15, 1905.

This application was denied, without a written opinion, on June 15, 1905, after a hearing. See page 270, first volume, 1902 report of this Board. (Case No. 3337.)

## **Change of Name.**

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### **1.**

**IN THE MATTER OF THE APPLICATION OF "CORNING AND PAINTED POST STREET RAILWAY," UNDER SECTION 2411 OF THE CODE OF CIVIL PROCEDURE, FOR APPROVAL OF PETITION TO THE SUPREME COURT FOR LEAVE TO CHANGE ITS NAME TO "ELMIRA, CORNING AND PAINTED POST RAILWAY."**

**Determination. March 9, 1905.**

This application, under section 2411 of the code of civil procedure, was filed with this Board on December 21, 1904. On that date, Thomas O'Connor, attorney for the applicant, was heard by the Board in the matter.

After consideration, this Board has determined not to approve the applicant's petition to the supreme court for approval of change of name from "Corning and Painted Post Street railway" to "Elmira, Corning and Painted Post railway," and its application for said approval is hereby denied. (Case No. 3267.)

## Cessation of Operation During Winter.

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### 1.

IN THE MATTER OF THE APPLICATION OF THE GLENFIELD AND WESTERN RAILROAD COMPANY, UNDER 55 OF THE RAILROAD LAW, FOR PERMISSION TO CEASE THE OPERATION OF ITS RAILROAD FROM JANUARY 1, 1905, TO MAY 1, 1905.

Determination. December 21, 1904.

This application, under section 55 of the Railroad Law, by the Glenfield and Western Railroad Company, whose railroad extends from a point on the Utica and Black River railroad (leased to and operated by the New York Central and Hudson River Railroad Company) known as Glenfield to near a point called Monteola and is principally used for the transportation of lumber, was filed with this Board on December 9, 1904. It asks permission to cease the operation of its railroad from January 1, 1905, to May 1, 1905. A report in the matter was made by an inspector of the Board who was familiar with the country through which the road is constructed, who reports that this railroad is constructed through a territory where the snow is very deep; that last winter before the end of December there was from six to seven feet of snow on the level along a portion of the line, and that usually through this section there is four feet or more of snow; that very nearly all the business done by the railroad is done for lumber companies and that few passengers excepting the employees of the lumber companies and their families are carried.

Under these circumstances, the Board believes that it is justified in granting this application. It is, therefore,

Ordered, That permission be and it is hereby given to the Glenfield and Western Railroad Company to cease the operation of its railroad from January 1, 1905, to May 1, 1905. (Case No. 3262.)

See page 217, first volume, 1904 report of this Board.

## Applications for Approval of Cooking Ranges in Cars.

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1.

STATE OF NEW YORK,  
BOARD OF RAILROAD COMMISSIONERS.

ALBANY, April 18, 1905.

G. S. BRIGHAM, Esq., *Major and Quartermaster, U. S. A., Army building,  
Whitehall street, New York City.*

DEAR SIR.—Your letter of the 10th inst., asking this Board to consent, under section 51 of the Railroad Law of this State (copy inclosed), to the use of stoves for cooking purposes in baggage cars in trains in this State to be used to transport the Ninth U. S. Infantry from Sackett's Harbor to the State line, starting on or about the 23d inst., has been received. This Board hereby consents, under section 51 of the Railroad Law, to said use of said stoves in said baggage cars.

As we are not certain of the railroad routes to be followed, we will not undertake to notify the railroad companies to this effect, but this letter may be used as said notification.

By the Board,  
(Signed)

GEO. W. ALDRIDGE,  
*Secretary.*



## Accidents.

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The Board has determined this year not to publish in detail the results of its special investigations of accidents, in an endeavor to reduce the size of this volume; it prints here, however, a statement of the accidents which it investigated and in which its inspectors have made reports. As usual, copies of the inspectors' reports were sent to the companies, and in some instances recommendations were made, most of which were complied with and others of which are pending.

### STEAM RAILROADS.

#### ALBANY AND HUDSON RAILROAD.

1. Head-on collision near Schodack Center, June 30, 1905. No recommendation. (Steam Case No. 23—1905.)
2. Head-on collision a short distance north of Nassau, September 24, 1905. No recommendation. (Steam Case No. 29—1905.)

#### BOSTON AND ALBANY RAILROAD (NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, LESSEE).

3. Rear collision between freight trains near Niverville, January 8, 1905. No recommendation. (Steam Case No. 7—1905.)

#### BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY.

4. Head-on collision between freight trains north of West Falls station, December 20, 1904. No recommendation. (Steam Case No. 63—1904.)
5. Bursting of a flue on locomotive near Glenwood, December 21, 1904. No recommendation. (Steam Case No. 68—1904.)
6. Rear collision between a passenger and freight train near Riverside Junction, January 28, 1905. No recommendation. (Steam Case No. 6—1905.)

#### DELAWARE AND HUDSON COMPANY.

7. Glancing collision between freight trains near Worcester, December 1, 1904. No recommendation. (Steam Case No. 58—1904.)
8. Head-on collision between a freight and passenger train at Plattsburg, February 4, 1905. No recommendation. (Steam Case No. 13—1905.)
9. Rear collision between a passenger and a freight train near Sidney, August 5, 1905. No recommendation. (Steam Case No. 26—1905.)
10. Rear collision between passenger trains about one mile north of Fort Edward, August 18, 1905. No recommendation. (Steam Case No. 27—1905.)

#### DELAWARE, LACKAWANNA AND WESTERN RAILROAD.

11. Rear collision between freight trains near Bath, December 11, 1904. No recommendation. (Steam Case No. 60—1904.)
12. Derailement of cars in freight train near Lowman, December 27, 1904. No recommendation. (Steam Case No. 65—1904.)

## ERIE RAILROAD.

13. Explosion of boiler of locomotive engine No. 1582 between Smithboro and Tioga Center, January 3, 1905. No recommendation. (Steam Case No. 3—1905.)

14. Rear collision between freight trains near Otisville, February 7, 1905. No recommendation. (Steam Case No. 16—1905.)

15. Head-on collision between freight trains at La Salle, April 16, 1905. No recommendation. (Steam Case No. 19—1905.)

## INTERNATIONAL BRIDGE COMPANY.

16. Collision between dummy car carrying passengers and switch engine on the International Bridge, near Black Rock, January 2, 1905. (This was a Grand Trunk railway accident.) No recommendation. (Steam Case No. 9—1905.)

## LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY.

17. Rear collision between passenger trains at Wanakah, January 4, 1905. No recommendation. (Steam Case No. 4—1905.)

18. Collision between a passenger train and a switching locomotive in the Buffalo yard, May 17, 1905. No recommendation. (Steam Case No. 22—1905.)

## LEHIGH VALLEY RAILROAD.

19. Rear collision between freight trains near Stafford, January 3, 1905. No recommendation. (Steam Case No. 2—1905.)

20. Dropping of crown sheet of boiler of locomotive No. 1107 at the International railway bridge, near Gratwick station on the New York Central and Hudson River railroad, January 21, 1905. No recommendation. (Steam Case No. 10—1905.)

21. Collision between passenger train and a derailed freight car at Valois, April 3, 1905. No recommendation. (Steam Case No. 18—1905.)

## LONG ISLAND RAILROAD.

22. Accident to track laborers at Jamaica, January 6, 1905. No recommendation. (Steam Case No. 5—1905.)

23. Derailement of passenger train at Woodhaven Junction, May 15, 1905. No recommendation. (Steam Case No. 21—1905.)

## NEW YORK CENTRAL AND HUDSON RIVER RAILROAD.

24. Collision between a passenger train and a light engine at Rensselaer, October 14, 1904. No recommendation. (Steam Case No. 54—1904.)

25. Derailement of cars of freight train which was run into by a passenger train near Little Falls, December 5, 1904. No recommendation. (Steam Case No. 59—1904.)

26. Head-on collision between freight trains on the Rome, Watertown and Ogdensburg division at Red Creek, December 15, 1904. No recommendation. (Steam Case No. 62—1904.)

27. Collision between passenger train and switch engine at Syracuse, December 21, 1904. Recommendation. (Steam Case No. 64—1904.)

28. Partial dropping of the crown sheet of locomotive No. 2389 near Little Falls, December 29, 1904. No recommendation. (Steam Case No. 66—1904.)

29. Rear collision between pusher engine and a freight train east of Byron, December 29, 1904. No recommendation. (Steam Case No. 67—1904.)

30. Rear collision between freight trains on the Schenectady detour near Hoffman, January 21, 1905. Recommendation. (Steam Case No. 1—1905.)

31. Dropping of crown sheet of engine No. 2795 at Whitesboro, February 4, 1905. No recommendation. (Steam Case No. 12—1905.)

32. Collision between a gravel train of the International Railway and a New York Central and Hudson River railroad passenger train near Payne's avenue, North Tonawanda, February 4, 1905. No recommendation. (Steam Case No. 15—1905.)

33. Derailment of passenger train at St. Johnsville, February 8, 1905. No recommendation. (Steam Case No. 17—1905.)

34. Collision between passenger trains of the New York and Harlem (lessor) and New York, New Haven and Hartford railroads at Bronx Park, May 4, 1905. No recommendation. (Steam Case No. 20—1905.)

35. Dropping of crown sheet of locomotive engine No. 2701, drawing a freight train, about one mile east of St. Johnsville, June 20, 1905. No recommendation. (Steam Case No. 25—1905.)

36. Derailment of a New York, New Haven and Hartford railroad train at southerly end of the Park avenue tunnel, New York city, September 18, 1905. No recommendation. (Steam Case No. 28—1905.)

37. Rear collision between a passenger and a freight train on the Rome, Watertown and Ogdensburg division, near Carthage, October 9, 1905. No recommendation. (Steam Case No. 30—1905.)

#### NEW YORK, NEW HAVEN AND HARTFORD.

38. Rear collision between freight trains at Manchester bridge on the Highland division. No recommendation. (Steam Case No. 14—1905.)

#### NEW YORK, CHICAGO AND ST. LOUIS RAILROAD.

39. Head-on collision between freight trains near Dunkirk, December 10, 1904. No recommendation. (Steam Case No. 61—1904.)

#### PENNSYLVANIA RAILROAD.

40. Head-on collision between freight trains near Franklinville, September 28, 1904. No recommendation. (Steam Case No. 53—1904.)

#### PITTSBURG, SHAWMUT AND NORTHERN RAILROAD.

41. Grade crossing accident near Hornellsville, February 1, 1905. No recommendation. (Steam Case No. 11—1905.)

#### STREET AND ELEVATED RAILROADS.

##### BROOKLYN HEIGHTS.

1. Collision between passenger trains on the Fifth Avenue Elevated line between Thirty-sixth and Fortieth street stations, September 16, 1904. No recommendation. (Street Case No. 38—1904.)

2. Rear end collision between trains on the Fifth Avenue Elevated line, November 16, 1904. No recommendation. (Street Case No. 46½—1904.)

3. Rear collision between trains on the elevated railroad near Crescent street station, November 18, 1904. No recommendation. (Street Case No. 47—1904.)

4. Collision between cars on Liberty avenue, near Rockaway avenue, November 22, 1904. No recommendation. (Street Case No. 49—1904.)

5. Collision between cars of the Coney Island and Brooklyn railroad and the Brooklyn Heights railroad at the corner of Myrtle and Franklin avenues, December 29, 1904. No recommendation. (Street Case No. 55—1904.)

6. Derailment of a car at the corner of Buffalo avenue and Douglass street, January 7, 1905. No recommendation. (Street Case No. 3—1905.)

7. Rear collision between cars on the Brooklyn bridge, August 22, 1905. No recommendation. (Street Case No. 23—1905.)

8. Collision between trains at the Culver depot, Coney Island, August 23, 1905. No recommendation. (Street Case No. 24—1905.)

9. Car striking automobile at Kings Highway, August 24, 1905. No recommendation. (Street Case No. 27—1905.)

10. Rear collision between cars at the trestle over Coney Island creek, September 10, 1905. No recommendation. (Street Case No. 29—1905.)

11. Car striking truck on Fifth avenue between Seventy-second and Seventy-third streets, September 23, 1905. No recommendation. (Street Case No. 30—1905.)

12. Runaway car on the Montague street cable line, October 11, 1905. No recommendation. (Street Case No. 33—1905.)

#### BUFFALO AND DEFEW RAILWAY.

13. Derailment of a car in the village of Depew, July 2, 1905. No recommendation. (Street Case No. 17—1905.)

#### CITIZENS' RAILROAD, LIGHT AND POWER COMPANY.

14. Rear collision between cars on Beekman street, Fishkill, June 23, 1905. (Street Case No. 13—1905.)

#### CONEY ISLAND AND BROOKLYN RAILROAD.

15. Rear collision between cars on Coney Island avenue, August 2, 1905. No recommendation. (Street Case No. 18—1905.)

16. Rear collision between cars on Coney Island avenue, near Coney Island creek, August 9, 1905. Recommendation. (Street Case No. 20—1905.)

#### HUDSON VALLEY RAILWAY.

17. Head-on collision between an express car and passenger car, north of Stillwater, December 20, 1904. No recommendation. (Street Case No. 53—1904.)

#### INTERBOROUGH RAPID TRANSIT COMPANY (MANHATTAN RAILWAY).

18. Rear collision between trains at Third avenue and Twenty-third street, July 29, 1904. No recommendation. (Street Case No. 31—1904.)

19. Collision between trains Third Avenue line, One Hundred and Twelfth street, October 17, 1904. No recommendation. (Street Case No. 43—1904.)

20. Rear collision between Ninth avenue trains, between Fourteenth street and Christopher street stations, January 6, 1905. No recommendation. (Street Case No. 2—1905.)

21. Collision between trains at One Hundred and Forty-ninth street and Third avenue, February 9, 1905. No recommendation. (Street Case No. 6—1905.)

22. Rear collision between trains south of the One Hundred and Thirty-third street station, Third Avenue line, May 7, 1905. No recommendation. (Street Case No. 8—1905.)

23. Rear collision between trains of the Third Avenue line, near One Hundred and Thirty-third street, May 22, 1905. (Street Case No. 10—1905.)

24. Derailment of train at One Hundred and Twenty-eighth street, Second Avenue line, July 2, 1905. No recommendation. (Street Case No. 16—1905.)

25. Derailment of train at the junction of Sixth and Ninth Avenue Elevated railroad, Fifty-third street, September 11, 1905. Recommendation. (Street Case No. 28—1905.)

26. Rear collision between trains at Third avenue and One Hundred and Tenth street, October 5, 1905. No recommendation. (Street Case No. 32—1905.)

## INTERNATIONAL RAILWAY.

27. Collision between a car and a New York Central and Hudson River railroad engine at the Second street grade crossings, Niagara Falls, November 22, 1904. Recommendation. (Street Case No. 52—1904.)

28. Collision between a car of the International Railway Company and a light engine of the Erie railroad at the Niagara street grade crossing, Buffalo, December 24, 1904. Recommendation. (Street Case No. 54—1904.)

29. Glancing collision between cars at Main and Jefferson streets, Buffalo, February 8, 1904. No recommendation. (Street Case No. 7—1904.)

## LONG ISLAND ELECTRIC RAILWAY.

30. Rear collision between cars on Washington street north of Center street, Jamaica, October 26, 1904. No recommendation. (Street Case No. 45—1904.)

## NEW YORK CITY RAILWAY.

31. Rear collision between cars on Third avenue at Ninety-ninth street, March 11, 1904. No recommendation. (Street Case No. 9—1904.)

32. Collision between cars at the Ninth and Stuyvesant street crossing, March 29, 1904. No recommendation. (Street Case No. 10—1904.)

33. Collision between cars at the Fifty-ninth street and Second avenue crossing, December 19, 1904. No recommendation. (Street Case No. 51—1904.)

34. Collision between cars at the Bowery and Spring street crossing, February 2, 1905. No recommendation. (Street Case No. 5—1905.)

35. Collision between cars at Amsterdam avenue and One Hundred and Twenty-fifth street, August 2, 1905. No recommendation. (Street Case No. 19—1905.)

36. Collision between cars at One Hundred and Twenty-fifth street and Amsterdam avenue, August 8, 1905. No recommendation. (Street Case No. 26—1905.)

## NEW YORK AND QUEENS COUNTY RAILWAY.

37. Head-on collision between cars near the corner of Sanford and Jamaica avenues, Flushing, October 25, 1904. No recommendation. (Street Case No. 44—1904.)

## POUGHKEEPSIE CITY AND WAPPINGERS FALLS ELECTRIC RAILWAY.

38. Rear collision between cars south of Poughkeepsie, November 3, 1904. No recommendation. (Street Case No. 46—1904.)

## ROCHESTER AND EASTERN RAPID RAILWAY.

39. Head-on collision between cars at the Emerson curve, near Canandaigua, November 19, 1904. Recommendation. (Street Case No. 48—1904.)

## STATEN ISLAND MIDLAND RAILROAD.

40. Head-on collision between cars on the Richmond road, near Ruff street, between St. George and Concord, May 8, 1905. No recommendation. (Street Case No. 9—1905.)

41. Derailment of a car on the Richmond road, about four miles south of St. George, June 28, 1905. No recommendation. (Street Case No. 14—1905.)

## UNITED TRACTION COMPANY.

42. Collision between a car of the United Traction Company and a freight train of Th Delaware and Hudson Company at the Albany street, Green Island, crossing of said railroads. Recommendation. (Street Case No. 11—1905.)

## UTICA AND MOHAWK VALLEY RAILWAY.

43. Derailment of a car on Highland avenue, Utica, August 13, 1905. Recommendation. (Street Case No. 21—1905.)

## UNION RAILWAY (NEW YORK CITY).

44. Derailment of a car on Burnside avenue, December 12, 1904. Recommendation. (Street Case No. 50—1904.)

## Length of Steam Railroads.

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ACTUALLY BUILT AND IN OPERATION IN NEW YORK STATE,  
JUNE 30, 1905.

(This does not include second track, sidings or turnouts.)

Small capitals indicate lessees or owners; indentations indicate leased, operated or proprietary lines.

Name of company.	Miles in New York State.
*Albany and Hudson.....	35.10
*Hudson Street portion.....	2.25
†Amsterdam, Chuchtanunda and Northern.....	1.50
Bath and Hammondsport.....	10.00
<b>BOSTON AND MAINE:</b>	
Fitchburg. . . . .	88.84
Saratoga and Schuylerville Branch,.....	25.82
Troy and Bennington.....	5.04
Brooklyn and Rockaway Beach.....	3.20
Buffalo, Attica and Arcade.....	28.00
Buffalo Creek.....	5.82
Buffalo Creek Transfer.....	1.10
Buffalo, Rochester and Pittsburg.....	177.36
<b>BUFFALO AND SUSQUEHANNA:</b>	
Addison and Susquehanna.....	10.00
Wellsville, Coudersport and Pine Creek.....	10.11
<b>CATSKILL MOUNTAIN.....</b>	<b>15.75</b>
Cairo . . . . .	3.77
Catskill and Tannersville.....	5.50
<b>CENTRAL AND NEW ENGLAND.....</b>	<b>57.60</b>
Hartford and Connecticut Western.....	42.50
Connecting Terminal . . . . .	1.00
Cranberry Lake . . . . .	6.00
Dansville and Mount Morris.....	12.53

\*Operated by electricity.

†Operated by New York Central and Hudson River under contract.

Name of company.	Miles in New York State.
<b>DELAWARE AND HUDSON COMPANY :</b>	
Adirondack .....	56.97
Albany and Susquehanna.....	142.59
Chateaugay and Lake Placid.....	63.23
Cherry Valley, Sharon and Albany.....	21.04
Cooperstown and Charlotte Valley.....	4.51
Cooperstown and Susquehanna Valley.....	19.48
Lackawanna and Susquehanna (owned).....	17.65
New York and Canada and leased lines.....	151.08
Plattsburgh and Dannemora.....	16.38
Rensselaer and Saratoga and leased lines.....	155.15
Schenectady and Duanesburgh.....	13.79
Schenectady and Mechanicville (owned).....	9.93
<b>DELAWARE, LACKAWANNA AND WESTERN :</b>	
Cayuga and Susquehanna.....	34.41
Erie and Central New York.....	18.31
Greene .....	8.10
New York, Lackawanna and Western.....	208.06
Oswego and Syracuse.....	34.98
Syracuse, Binghamton and New York.....	80.95
Utica, Chenango and Susquehanna Valley.....	97.41
Valley .....	11.11
<b>ERIE AND PROPRIETARY LINES.....</b>	<b>797.48</b>
Avon, Geneseo and Mount Morris.....	17.70
Goshen and Deckertown.....	11.64
Middletown and Crawford.....	10.22
Middletown, Unionville and Water Gap.....	13.65
Montgomery and Erie.....	10.43
Northern Railroad of New Jersey.....	5.82
Patterson and Hudson River.....	.85
Rochester and Genesee Valley.....	18.40
<b>FONDA, JOHNSTOWN AND GLOVERSVILLE.....</b>	<b>*75.34</b>
†Johnstown, Gloversville and Kingsboro.....	4.23
‡Gloversville and Broadalbin.....	6.20
§Fulton Chain .....	2.21
Genesee and Wyoming.....	16.16
Glenfield and Western.....	13.18
<b>GRAND TRUNK :</b>	
Champlain and St. Lawrence.....	1.21
United States and Canada.....	22.18

\*49.14 miles operated by electricity; 26.20 miles operated by steam.

†Electric road, operated by Fonda, Johnstown and Gloversville.

‡Steam road operated by Fonda, Johnstown and Gloversville.

§Operated by New York Central and Hudson River as Agent.



Name of company.	Miles in New York State.
Greenwich and Johnsonville.....	21.24
Island .....	.14
Jamestown, Chautauqua and Lake Erie.....	37.39
Kanona and Prattsburgh.....	11.44
Keeseville, Ausable Chasm and Lake Champlain.....	5.64
Lake Champlain and Moriah.....	9.48
Lake Shore and Michigan Southern.....	69.50
LEHIGH AND HUDSON RIVER.....	14.50
Orange County .....	10.70
LEHIGH AND NEW ENGLAND:	
Campbell Hall Connecting.....	3.78
Pochuck .....	2.70
LEHIGH VALLEY (RAILROAD):	
Hayt's Corners, Ovid and Willard.....	5.18
Lehigh and Lake Erie.....	2.94
Lehigh and New York.....	115.37
Lehigh Valley (Railway).....	498.34
Little Falls and Dolgeville.....	10.32
LONG ISLAND.....	316.35
*Brooklyn and Jamaica.....	9.60
Jamaica and South Shore.....	5.46
New York, Brooklyn and Manhattan Beach.....	18.32
New York and Rockaway Beach.....	11.74
North Shore Branch.....	30.29
Marine .....	.44
†Massena Terminal .....	1.56
Middleburgh and Schoharie.....	5.33
Newburgh, Dutchess and Connecticut.....	58.84
NEW JERSEY AND NEW YORK.....	16.88
Garnerville .....	1.00
New Jersey and New York Extension.....	2.37
NEW YORK CENTRAL AND HUDSON RIVER.....	811.70
Albany Branch .....	11.52
Boston and Albany.....	38.56
Hudson and Chatham Branch.....	17.33
Carthage and Adirondack.....	45.85
Carthage, Watertown and Sackett's Harbor.....	28.76
‡Dunkirk, Allegheny Valley and Pittsburg.....	42.30

\*Owned by Nassau Electric.

†Used by New York Central and Hudson River.

‡Leased to New York Central and Hudson River; operated by Lake Shore and Michigan Southern under agreement.

Name of company.	Miles in New York State.
Fall Brook .....	14.62
Gouverneur and Oswegatchie.....	13.24
Port Morris Branch.....	1.90
New York and Harlem.....	127.45
New York and Mahopac.....	7.22
New York and Putnam.....	53.73
Mohawk and Malone.....	182.18
Mahopac Falls .....	2.05
Niagara Falls Branch.....	8.58
Oswego and Rome.....	26.80
Rapid Transit Branch.....	3.10
Rockland Lake Branch.....	1.17
Rome, Watertown and Ogdensburg.....	410.14
Spuyten Duyvil and Port Morris.....	6.04
Syracuse, Geneva and Corning.....	64.27
Terminal of Buffalo.....	11.02
Tivoli Hollow .....	1.24
Troy and Greenbush.....	5.56
Utica and Black River.....	150.23
Wallkill Valley .....	32.88
West Shore .....	447.45
New York Central, Hudson River and Fort Orange....	1.00
 NEW YORK, CHICAGO AND ST. LOUIS.....	 60.23
Lake Shore and Michigan Southern (Portion of)...	7.84
 NEW YORK, NEW HAVEN AND HARTFORD.....	 14.04
Dutchess County .....	12.40
Harlem River and Port Chester.....	11.50
New England .....	30.56
 NEW YORK, ONTARIO AND WESTERN.....	 318.77
Ellenville and Kingston.....	27.14
Ontario, Carbondale and Scranton.....	2.91
Pecksport Connecting .....	3.69
Port Jervis, Monticello and Summitville.....	40.80
Rome and Clinton.....	12.78
Utica, Clinton and Binghamton.....	31.30
Wharton Valley .....	6.80
New York and Ottawa.....	68.40
New York and Pennsylvania.....	27.28
Niagara Junction .....	5.15
 NORTHERN CENTRAL (OF PENNSYLVANIA):	
Elmira and Lake Ontario.....	99.61
Elmira and Williamsport.....	6.50

# LENGTH OF STEAM RAILROADS.

167

Name of company.	Miles in New York State.
Norwood and St. Lawrence.....	7.50
Oswayo Valley.....	.50
Otis .....	1.08
Owasco River .....	.50
PENNSYLVANIA:	
Western New York and Pennsylvania.....	315.99
PITTSBURG, SHAWMUT AND NORTHERN.....	79.20
Rochester, Hornellsville and Lackawanna.....	10.28
PHILADELPHIA AND READING:	
Central Dock and Terminal.....	.39
Port Chester Terminal.....	.50
Poughkeepsie and Eastern.....	34.99
*Racquette Lake .....	18.13
†Rochester, Charlotte and Manitou.....	7.50
RUTLAND .....	170.09
Addison .....	.85
Schoharie Valley .....	4.38
Silver Lake .....	6.86
Skaneateles .....	5.00
South Buffalo .....	5.91
*St. Lawrence and Adirondack.....	10.25
Staten Island .....	12.65
Staten Island Rapid Transit.....	10.87
Sterling Mountain .....	7.60
Troy Union .....	1.87
Ulster and Delaware.....	128.90
Unadilla Valley .....	19.14
Total.....	8,254.18

\*Operated by New York Central and Hudson River as Agent.  
†Operated by electricity.

## Length of Elevated, Underground and Surface Street Railroads.

ACTUALLY BUILT AND IN OPERATION IN NEW YORK STATE,  
JUNE 30 1905.

(This does not include second track, sidings or turnouts.)

Small capitals indicate lessees or owners; indentions indicate leased, operated or proprietary lines.

*Elevated and Street Surface Railroads (Operated by Mechanical Traction).*

Name of company.	Miles in New York State.
Adirondack Lakes' (Gloversville).....	4.35
Auburn and Syracuse.....	35.119
Ballston Terminal .....	12.00
*Bennington and Hoosick Valley.....	7.75
Binghamton .....	31.45
Black River Traction.....	10.00
 BROOKLYN HEIGHTS .....	 .483
Brooklyn City. . . . .	104.692
Brooklyn Union Eleated.....	35.653
Prospect Park and Coney Island and leased lines.	9.76
Sea Beach .....	6.34
South Brooklyn .....	1.465
Brooklyn, Queens County and Suburban.....	26.119
Buffalo and Depew.....	6.69
Buffalo, Dunkirk and Western.....	7.00
Buffalo and Williamsville.....	8.75
Buffalo Southern .....	19.50
Catskill .....	5.303
Chautauqua (Jamestown) .....	17.368
 CITIZENS' RAILROAD, LIGHT AND POWER (FISHKILL)...	 2.53
Fishkill Electric .....	4.26
 CITY OF NEW YORK:	
New York and Brooklyn Bridge.....	1.30
Williamsburch Bridge .....	1.623

\*Also has 8.25 miles outside of State.

# LENGTH OF ELEVATED AND SURFACE STREET RAILROADS. 169

Name of company.	Miles in New York State.
CONEY ISLAND AND BROOKLYN.....	13.75
Brooklyn City and Newtown.....	9.854
DeKalb Avenue and North Beach.....	.532
Coney Island and Gravesend.....	3.20
Corning and Painted Post.....	5.30
Cortland County Traction.....	9.76
Crosstown (Buffalo) .....	52.155
Dry Dock, East Broadway and Battery (New York City) .....	1.27
DUNKIRK AND FREDONIA.....	3.506
Buffalo, Dunkirk and Western.....	3.00
Elmira and Seneca Lake.....	16.125
ELMIRA WATER, LIGHT AND RAILROAD.....	11.556
West Side .....	8.068
West Water Street.....	3.526
Forty-second Street, Manhattanville and St. Nicholas Avenue (New York City).....	6.426
Geneva, Waterloo, Seneca Falls and Cayuga Lake....	17.00
Hamburg .....	12.125
Hornellsville and Canisteo.....	4.318
Hornellsville Electric .....	4.845
HUDSON VALLEY.....	116.82
North River .....	1.00
Huntington .....	3.036
INTERBOROUGH (NEW YORK CITY):	
Manhattan Elevated .....	37.68
Rapid Transit (Subway).....	16.96
*INTERNATIONAL (BUFFALO).....	124.568
Erie .....	19.72
Niagara Reservation (owned by New York State). ..	.16
ITHACA .....	6.33
Cayuga Lake Electric.....	1.00
Jamestown .....	19.792
Jerome Park .....	1.666
Kingsbridge (New York City).....	3.197
Kingston Consolidated .....	7.979
†Lake Erie .....	11.625

\*Has also 16.2888 miles in Canada.

†Has also 5.375 miles in Pennsylvania.

# 170 LENGTH OF ELEVATED AND STREET SURFACE RAILROADS.

Name of company.	Miles in New York State.
Lima-Honeoye Electric Light and Railroad.....	4.46
Long Island Electric.....	16.60
Nassau County .....	1.55
Nassau Electric .....	64.085
New Paltz, Highland and Poughkeepsie.....	9.021
New York City and leased lines.....	88.741
New York and Long Island.....	29.843
New York and Queens County.....	40.241
New York and Stamford.....	14.12
NIAGARA GORGE .....	6.83
Lewiston and Youngstown Frontier.....	8.50
Nortport Traction .....	2.69
OCEAN ELECTRIC .....	3.61
Rockaway Electric .....	.18
Ogdensburg .....	9.50
*Olean .....	27.95
†Olean, Rock City and Bradford.....	9.48
Oneida .....	4.40
Oneonta, Cooperstown and Richfield Springs.....	59.06
Orange County Traction (Newburgh).....	16.75
Oswego Traction .....	10.50
Peekskill Lighting and Railroad.....	10.01
Penn Yan, Keuka Park and Branchport.....	8.50
Plattsburgh Traction .....	6.50
Port Jervis Electric Light, Power, Gas and Railroad..	4.30
Poughkeepsie City and Wappingers Falls.....	15.60
Richmond Light and Railroad.....	18.85
ROCHESTER .....	48.89
Rochester Electric .....	4.61
Rochester and Sodus Bay.....	38.91
Rochester and Suburban (portion to Summerville)	4.50
ROCHESTER AND EASTERN.....	40.00
Ontario Light and Traction.....	2.75
Rochester and Suburban.....	5.87
Rome .....	5.50
Schenectady .....	56.95
Southern Boulevard (New York City).....	3.50
Southfield Beach .....	1.87
St. Lawrence International Electric R. R. and Land..	7.50

\*Also operates, under lease, 4.10 miles in Pennsylvania.

†Also has 6.37 miles in Pennsylvania.

# LENGTH OF ELEVATED AND SURFACE STREET RAILROADS. 171

Name of company.	Miles in New York State.
Staten Island Midland.....	16.076
Syracuse, Lakeside and Baldwinsville.....	14.24
<b>SYRACUSE RAPID TRANSIT</b> .....	<b>43.20</b>
East Side Traction.....	8.00
Syracuse and Suburban.....	15.71
Tarrytown, White Plains and Mamaroneck.....	21.58
Thirty-fourth Street Crosstown (New York City)....	.476
Troy and New England.....	8.90
Twenty-eighth and Twenty-ninth Streets Crosstown (New York City).....	.331
<b>UNION (NEW YORK CITY)</b> .....	<b>40.267</b>
Bronx Traction .....	6.912
<b>UNITED TRACTION (ALBANY AND TROY)</b> .....	<b>38.632</b>
Capital .....	1.286
Cohoes City .....	6.250
Lansingburgh and Cohoes.....	1.10
Troy and Cohoes.....	3.58
Waterford and Cohoes.....	1.888
<b>UTICA AND MOHAWK VALLEY</b> .....	<b>59.031</b>
Utica, Clinton and Binghamton (street portion) .	9.96
Van Brunt Street and Erie Basin (Brooklyn).....	1.25
Wallkill Transit .....	11.74
*Waverly, Sayre and Athens.....	3.00
Westchester Electric (New York City).....	27.922
Westchester Traction (Ossining).....	2.943
Yonkers .....	25.24
<b>Total .....</b>	<b>1,999.589</b>

## *Operating Street Surface Railroads, Animal Power.*

Babylon .....	1.53
City Island .....	1.80
Dry Dock, East Broadway and Battery (New York City).....	7.234
Forty-second Street, Manhattanville and St. Nicholas Avenue (New York City).....	5.821
Fulton Street (New York City).....	.394

\*Also operates 5.887 miles in Pennsylvania.

## 172 LENGTH OF ELEVATED AND STREET SURFACE RAILROADS.

Name of company.	Miles in New York State.
Lake Ontario and Riverside (Fulton and Oswego Falls portion) .....	1.00
New York City and leased lines.....	32.253
Pelham Park .....	1.40
Twenty-eighth and Twenty-ninth Streets Crosstown (New York City).....	2.505
Total . . . . .	<u>53.937</u>

### SUMMARY.

Operated by mechanical traction.....	1,999.589
Operated by horses.....	53.937
Total (street surface and elevated).....	<u>2,053.526</u>



## Inspections.

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Following are reports made by the inspector for this Board of his regular inspections during the year of steam railroads in the State, about half the mileage of which is inspected each year, and statements as to prior inspections. The steam railroad inspections include the elevated railroads in New York and Brooklyn when those railroads are inspected. Following these reports are reports by the electrical expert for the Board of his regular inspections during the year of street railroads, and statements as to prior inspections. Copies of these reports are sent to the companies with letters, in most instances making the recommendations of the inspector or electrical expert the recommendations of this Board, and the companies are given an opportunity for hearing, if they desire a hearing. As will be seen by reference to note at the foot of each report, in most instances the companies have informed the Board that they would comply with the recommendations.

### Steam Railroads.

(Inspections and reports made by the Inspector.)

BOSTON AND MAINE RAILROAD.

*Fitchburg Division.*

(Inspected June 21 and 22, 1905.)

On June 21 and 22, 1905, I inspected the portion of the Fitchburg division of the Boston and Maine railroad in this State, and respectfully submit the following report:

The portion of the Fitchburg division of the Boston and Maine railroad in the State of New York consists of a main line, from the Vermont State line, west of North Pownal, to a connection with the West Shore railroad at Rotterdam Junction, and from Johnsonville to Troy; the Saratoga branch, from Mechanicville, on the main line, to Saratoga; the Schuylerville branch, from a connection with the Saratoga branch at Schuylerville Junction to Schuylerville; and the Bennington branch, from the Vermont State line to a connection with the main line at Hoosick Junction. The main line tracks are 88.84 miles in length, and that portion from the Vermont State line to Rotterdam Junction, with the exception of about a third of a mile across the Mohawk river and flats, has a second main track; between Crescent and Coons, however, the second track is owned by The Delaware and Hudson Company, and the two tracks between those places are operated jointly as a double track railroad. The main line from Johnsonville to Troy is single track. The trains of the Fitchburg division also operate through Mechanicville yard for a distance of about a mile on the tracks of The Delaware and Hudson Company. Each of the junctions with that company's tracks is protected by an interlocking plant. Trains of the Fitchburg division also operate over the tracks of the Troy Union railroad for a distance of 2.13 miles. The Saratoga and Schuylerville branches equal 25.82 miles, single track, and the portion of the Bennington branch in the State of New York 5.04 miles, also single track.

The cuts and embankments are of full width and proper slopes. The main line, Schuylerville and Bennington branches have good ditches. Some clay cuts on the Saratoga branch have ditches considerably blocked with material washed in from the slopes, and require cleaning. No subdrains are used.

All bridges in the roadway of the main line are steel or iron, in first-class condition, properly painted, and have standard floor systems, well maintained. Inside guard rails are maintained on only a few of the longer, high structures and through bridges. The steel and iron bridges on the other lines are in similar condition. There is in the roadway of the Bennington branch a wooden Howe truss bridge consisting of three spans, one 50 feet in length, one 160 feet, and the other 120 feet. The 50-foot span is on bents. The bridge, while old, is in very good condition. The only timber trestle remaining in the main line consists of seven spans at Johnsonville; it is of standard construction and in first-class repair. There are no timber trestles on the Bennington branch. On the Saratoga and Schuylerville branches there yet remain a large number of pile and framed bent trestles, mainly pile trestles; they are of standard construction; many of them have recently been renewed, and necessary repairs made to others. All the open culverts and cattle passes on the main line and Bennington branch, and most of those on the Saratoga and Schuylerville branches, have I-beam stringers; the few wooden stringers are of suitable strength and in good sound condition. The ties and guard timbers on bridges, trestles, open culverts and cattle passes are of standard dimensions and in good, sound condition, necessary repairs and renewals having been made. The masonry to all the structures is in very good condition. The arch and box culverts and iron pipe drains are properly maintained.

The cross-ties in the main line and Bennington branch tracks are about 50 per cent. chestnut, 25 per cent. yellow pine, and the remainder mixed cypress and oak; on the Saratoga and Schuylerville branches they are about 75 per cent. chestnut and the balance mixed oak and cedar. The standard dimensions are 6 by 8 inches, and they are laid at the rate of 2,992 to the mile of track. Extensive renewals have been made to cross-ties and they are now in good condition; they are evenly spaced and full spiked. Seventy-four miles of the main line track between the Vermont State line and Rotterdam Junction are laid with 85-pound, and the remaining portion with 76-pound steel rail; 22 miles of the 85-pound rail are connected by continuous rail joints, and 52 miles by Weber joints with four bolts to the joint; 6 miles of the 76-pound rail are connected by Fisher joints, 9 miles by continuous rail joints, 2 miles by Weber joints, and the remainder—approximately 10 miles—by 24-inch angle plates with four bolts to the joint. The 85-pound rail is comparatively new and in first-class condition; some of the 76-pound rail is considerably worn, especially that portion connected by Fisher joints, and arrangements are made for renewal. The portion of the main line between Johnsonville and Troy is laid entirely with 76-pound rail; 11 miles of this rail are connected by Fisher joints and the remaining portion by Weber joints. The rail in places is considerably worn, and approximately two miles of it is to be renewed in the near future. The Bennington branch is laid with 76-pound rail, 4 miles of it connected by continuous rail joints and the remaining portion—about one mile—by Weber joints. The rail is in very good condition. The Saratoga and Schuylerville branches are laid with 56-pound steel rail, connected by angle and fish plates 20 inches in length with four bolts. This rail is considerably worn and some renewals are needed. All the connections are full bolted and practically no loose bolts were discovered. All main track switches are split point and, with a few exceptions on the Saratoga and Schuylerville branches, have automatic stands. All are in good condition and have well painted targets. Switch and semaphore lamps show red light for danger and white for safety. Both rigid and spring rail frogs are in use and most are protected by foot-guards. The main line is generally fairly ballasted with gravel, the Bennington branch well ballasted with gravel, the Saratoga and Schuylerville branches lightly ballasted with gravel and cinders. The alignment and surfacing of track of the main line and Bennington branch are first-class, of the Saratoga and Schuylerville branches generally fair, and the curves are properly elevated for the rate of speed at which the trains are scheduled.

The following named railroads are crossed at grade: One track of the Chatham and Lebanon Valley railroad (operated by the Rutland Railroad

Company) at Petersburg Junction; the crossing is protected by an interlocking plant. One track of the Greenwich and Johnsonville railway is crossed by the eastbound track at Johnsonville; the crossing is protected by a semaphore signal on the Greenwich and Johnsonville Railway, and a target signal on the Fitchburg railroad; all trains are required to come to a full stop. Three tracks of The Delaware and Hudson Company's railroad are crossed at Mechanicville; the crossing is protected by an interlocking plant; at the west end of Mechanicville yard, where a connection is made with The Delaware and Hudson Company's tracks, there is also an interlocking plant, protecting the junction. One track of The Delaware and Hudson Company's railroad crosses a bridge also used by the Fitchburg railroad as an eastbound track, at Eagle Bridge; the tracks are gauntleted for a distance of about  $\frac{1}{2}$  of a mile, and the gauntleted track is protected by banjo signals operated by electricity; all trains are required to come to a full stop before entering upon the gauntleted track. One track of the Bennington and Hoosick Valley railway (electric) crosses the main track and three sidings of the Fitchburg railroad at Hoosick Falls; the conductors of the electric railroad are required to pilot their cars across the track of the steam railroad.

The only interlocking plants maintained are at the junctions with The Delaware and Hudson Company's tracks at Mechanicville and with the Bennington branch at Hoosick Junction, and the crossing of the Chatham and Lebanon Valley railroad at Petersburg Junction. An interlocking plant is now being erected at the junction with The Delaware and Hudson Company's tracks at Crescent. The operations of trains are governed by the telegraphic train order system, semaphores being located at stations.

The right of way is free from trees, brush and rubbish, and generally fenced with wire. The main line fences are in very fair condition; on the Bennington branch and the Saratoga and Schuylerville branches some repairs to fences are needed. The highway crossings are properly graded, well planked, and protected by signs of the fingerboard design; many of these signs have become dim and need repainting. Wooden slat cattle guards are used; some are missing and many are out of repair. Ten highway crossings are protected by flagmen, six by flagmen and gates, and three by electric bells. Mile posts are maintained and the whistle posts are properly located. All overhead obstructions are protected by warning signals.

The track sections are about three miles in length of the double track and six miles of the single track, and the force employed upon each section consists of a foreman and four laborers. No regular track walkers are employed, but all portions of the road are patrolled daily by some member of the section force. Each section gang are furnished with flags, lanterns, torpedoes and fuses.

The station buildings are well maintained and properly furnished. Water for drinking is provided, and timetables are posted in the waiting rooms. The station platforms are of plank or gravel. The station grounds and yards are well kept. Fire protection is furnished at all excepting the smaller stations. All the station employees are uniformed and wear a badge.

The passenger equipment is in good condition; all the cars are equipped with automatic couplers and air brakes, are heated by steam and lighted with Pintsch gas or oil lamps. Water for drinking is provided and emergency tools are located in a box beneath the car seat. All passenger trainmen are uniformed. All the freight cars observed were in good repair, all equipped with automatic couplers and air brakes.

The principal items of repairs and improvements noted as made since the last inspection (June, 1903) are as follows: Approximately 20 per cent. of the cross-ties have been renewed; 13 miles of new 85-pound steel rail have been laid, replacing 76-pound rail; four miles of main track have been rebalasted with cinders and one mile with gravel; three open culverts have been rebuilt and three covered with rails and the track ballasted over them eliminating the openings to grade; one concrete arch culvert has been rebuilt; necessary repairs have been made to station buildings and seven have been repainted; necessary repairs and renewals have been made to bridge, trestle and culvert floors; about three miles of board fence and twelve miles of wire fence have been rebuilt.

*Recommendations.*

That the ditches on the Saratoga branch now filled with clay be properly cleaned; that the necessary renewal of rail be made; that the remainder of the frogs, guard rails and the heels of switches be protected by foot-guards; that the fences be put in proper repair, the dim crossing signs repainted, and that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company with a letter making the above recommendations the recommendations of this Board. The company replied that all the work recommended "has either been completed or will be before cold weather." (No. 8—1905.)

**BROOKLYN AND ROCKWAY BEACH RAILROAD.**

(Inspected August 25, 1905.)

On August 25, 1905, I made an inspection of the Brooklyn and Rockaway Beach railroad and respectfully submit the following report:

The Brooklyn and Rockaway Beach railroad extends from Canarsie pier, on Jamaica bay, to East New York, a distance of 3.20 miles, and has 2.14 miles of second main track. The second main track has not been used for several years, and is in condition rendering it unfit for use. The road is operated only for a period of about two months during the summer season, and then only for a portion of the day, and almost entirely for pleasure seekers.

The general alignment of the road is good and the few curves are light. The grades are also light, and for most of its length level.

The roadway is fairly well graded and the drainage good. There are no bridges or other openings to grade. Wooden box drains are used to convey water through the embankments, and only very small streams are crossed. The cross-ties are in bad condition and at least half of them need renewing; comparatively few have been renewed this season and the condition of the ties is worse than at time of any previous inspection. The track in use is laid with a fair quality of steel rail weighing about 60 pounds per yard, connected by angle and fish plates 24 inches in length with 4 bolts; connections full bolted and most bolts tight. The switches are split point; stands rigid and some without targets. No switch lamps are used. All frogs are rigid. The alignment and surfacing of the track is poor. A little sand ballast has been used, but most of the road is practically without ballast and the track is overgrown with grass and weeds. A double track "Y" connecting the Manhattan Beach and Atlantic Avenue lines of the Long Island railroad is crossed at grade, in two places, at East New York; the crossings are protected by flagmen. Double track lines of the Brooklyn Rapid Transit Company (electric) cross at grade on Rockaway avenue one-fourth mile from Canarsie pier; again, about one mile from Canarsie pier, and on Liberty avenue, East New York; at each crossing the conductors of the electric railroad are required to pilot their cars across the track of the steam railroad.

There are no trees or brush along the railroad. The right of way is not fenced.

The highway crossings are well graded, planking in fair condition, and are protected by signs of the banner form.

The track repair force consists of but three men and they are employed during a portion of the summer only. A small station building is maintained at Canarsie pier, but the waiting room formerly furnished at East New York has been discontinued.

The railroad is generally in poor condition, only fit for slow speed and careful operation; the present schedule restricts the speed of trains to about ten miles per hour, and if that rate is not exceeded there is little danger of accident. After September 4, no more trains are to be run this season. Only small locomotives and light cars are used and they are in fair condition. (No. 37—1905.)

*Recommendations.*

That before the road is again put in operation, the necessary renewal of cross-ties (about 50 per cent.) be made; the track put in proper alignment and surface; switch stands be supplied with targets; all loose track bolts tightened; and that the crossings of the "Y" tracks of the Long Island railroad, at East New York, be protected by interlocking switches and signals.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that this road is to be changed to an electric road by next spring.

**BROOKLYN UNION ELEVATED RAILROAD.**

(Inspected April 20, 21, 24, 25, 26, 27 and May 4, 1905.)

I herewith respectfully submit report of an inspection of the Brooklyn Union Elevated railroad (operated by The Brooklyn Heights Railroad Company) made April 20, 21, 24, 25, 26, 27 and May 4, 1905.

The Brooklyn Union Elevated railroad comprises the following lines of elevated railroad in the borough of Brooklyn: Broadway line, extending from Broadway Ferry to Cypress Hills, 6.41 miles, double track, with 1.21 miles of sidings and 2.93 miles of yard tracks; Myrtle Avenue line, extending from a connection with the Lexington Avenue line corner of Hudson and Myrtle avenues to Wyckoff avenue, 3.67 miles, double track, with approximately 1 mile of sidings; Lexington Avenue line, extending through Grand and Lexington avenues from Myrtle avenue to Broadway, 2.51 miles, double track; Fifth Avenue line, extending from Brooklyn bridge to Sixty-seventh street (Bay Ridge), 6.43 miles, double track, with 0.56 miles of sidings and 0.50 miles of yard tracks; Fulton Street line (Kings County Elevated railroad), extending from Fulton ferry to the old City Line, 8.38 miles, double track, with 1.24 miles of sidings and 3.89 miles of yard tracks. The Fulton Ferry and Navy Yard line has been abandoned and the structure taken down.

The inspection of this road was made on foot, walking on the street underneath the structure, and also on the top of the structure along the tracks.

The foundations were all found in good condition and the anchorage of the columns secure. The columns are also in good condition excepting that through the business portion of the city the latticed columns have bases to a considerable extent filled with waste paper and rubbish, which retain moisture, causing rust to form, and which should be removed. The girders and connections are also in good condition excepting that they as well as the columns on practically all the lines are very much in need of paint, the metal being uncovered in many places, and rust rapidly forming. On the Fifth Avenue line there were observed a few angles which connect the longitudinal and the transverse girders, commencing to crack from the top. This is undoubtedly caused by the contraction and expansion and deflection of the longitudinal girders under the loads and the fact that the metal in the angles is evidently too hard. On the last inspection the same thing was noted, and all angles then found cracked were replaced,—also others which were discovered later,—and arrangements were made to replace them as rapidly as they show indications of failure. This cracking of the angles is not of a dangerous character, as none have broken except for a short distance from the top, and the base of the girder rests on a very strong bracket sufficient to support the girder and its loading. No other defects were observed excepting an occasional loose rivet in the unimportant members, which were also receiving attention and being replaced.

The ties and guard timbers are generally in good condition; inside guard timbers, however, are not generally maintained, but your inspector is advised that they are to be put upon the entire structure as rapidly as it can be done in connection with the other work. The ties on the Fulton street line

are not in so good condition as upon the other lines, but men are now engaged renewing them, and so far as completed the work has been well done. Tie-plates are not generally used; those in use are in fair condition.

The planks walks are properly maintained, and wherever they are on the outside of the track are protected by a railing.

Approximately 8.2 miles of main track are laid with 60-pound, 5.2 miles with 70-pound, 26.3 miles with 80-pound, and 15.1 miles with 85-pound steel rail. The sidings and yard tracks are laid with various weights of rail, weighing from 60 to 85 pounds per yard. The rail is in very fair condition and renewals are being made where necessary. All the connections are full bolted and bolts tight. The switches are split point and in good condition. Most main track frogs are spring rail. New hard center rigid frogs are being put in as rapidly as renewal becomes necessary. Most switches are protected by interlocking or by signals. At trailing switches, in most cases, automatic switch stands are in use. Switch lamps show red light for danger and green for safety, the safety signal having been changed from white to green—which is an improvement.

The station buildings and platforms are in good repair; stations clean and neat; fire extinguishers are provided in each. The stairways are well maintained. A few of the stations need repainting; many have already been repainted. The platforms are being extended as rapidly as possible to accommodate six-car trains; on the principal lines most of them have already been extended and men are now engaged putting extensions to others.

The interlocking plants are being reconstructed; several have already been completed—at others the reconstruction is now in progress, and arrangements are made to modernize all those needing it.

The general condition of the property has been improved since the last inspection was made (May and June, 1903). Approximately 15,200 cross-ties have been renewed; 59,200 lineal feet of new guaru timber put in, and 130,000 lineal feet of slating for foot-walks. Necessary repairs have been made to the structure, such as replacing loose rivets, cracked angles, etc. A new incline has been constructed on the Fifth Avenue line, at Thirty-eighth street, enabling cars to run from the structure to the surface, and vice versa. The incline in course of construction when the last inspection was made, at the terminus of this line at Sixty-fifth street, has also been completed and put in use. An incline near the terminus of the Broadway line at Cypress Hills, nearly completed at the time of the last inspection, was finished and put in use and a thorough service installed over the elevated line to that point, and on the surface to Jamaica. This service has since been discontinued, and the incline is not now in use. Changes have been made in the track connections at the Brooklyn bridge, so that all trains during non-rush hours are enabled to run to Park Row—thus improving the service. On the Brighton Beach line the incline from the elevated structure has been raised, reducing the grade and thereby eliminating two grade crossings. This work has necessitated structural changes as well as raising embankments, and putting in two new bridges over the highways on the portion of the line which formerly was on the surface. A new elevated yard, with new snops, store-rooms, etc., is being built at East New York. Extensive repairs and strengthening of the structure are in progress on Myrtle avenue and Adams street, to provide for future requirements. This work consists principally of putting in new cross girders or strengthening the present ones with heavy plates. The longitudinal girders are also being strengthened by putting on top and bottom plates and additional plates on the sides. This work is being well done. When the former inspection was made a large portion of the foot-walks on the side of the track were unprotected; since that time railing has been erected at all places. Only portions of the line were being operated electrically when that inspection was made; since then the third rail has been put down on the remaining portions of the structure, and the entire operation is now by electricity. Necessary repairs have been made to stations and 34 of them have been repainted. A few others need repainting,—notably, Atlantic Avenue and Eastern Parkway, on the Fulton Street line. Portions of the structure where strengthening and renewal have been done have been

repainted. The interior arrangements of the stations at Marcy avenue (up), Driggs avenue (up), Knickerbocker avenue, Halsey street, Chauncey street, Eastern Parkway, Thirty-sixth street, Sixteenth street, Sixty-fifth street, Fulton street, Gates avenue and Brooklyn Bridge terminal have been remodeled and improved. An additional stairway is being installed at Knickerbocker avenue; also an additional stairway is being installed and entrance and exit for passengers changed at Thirty-sixth street on the Fifth avenue line, so as to conform to the changed tracks and platform at that place. The platforms have been extended to accommodate six-car trains as follows:

*Fulton Street line.*—Flatbush avenue, 51 feet.

*Main line.*—Bridge street, 61 feet; Navy street, 70 feet; DeKalb avenue, 73 feet; Greene avenue, 76 feet; Franklin avenue, west 73 feet, east 72 feet; Nostrand avenue, west 72 feet, east 71 feet; Tompkins avenue, west 73 feet, east 73 feet; Sumner avenue, west 73 feet, east 72 feet; Reid avenue, west 73 feet, east 72 feet; Gates avenue, 89 feet; Halsey street, 84 feet; Chauncey street, 98 feet; Alabama avenue, 96 feet; Van Siclen avenue, 78 feet.

*Fifth Avenue line.*—St. Marks avenue, west 92 feet, east 93 feet; Union street, west 90 feet, east 92 feet; Third street, 54 feet; Ninth street, 58 feet; Sixteenth street, 54 feet; Twentieth street, 54 feet; Twenty-fifth street, 53 feet; Fortieth street, 67 feet; Forty-sixth street, 51 feet; Fifty-second street, 54 feet; Fifty-eighth street, 70 feet.

New interlocking plants have been installed at Ridgewood, Cypress Hills, City Line, Van Siclen avenue, East New York loop, Gates avenue, Grand and Myrtle avenues, Brooklyn bridge; Fulton Street line—Sixty-fifth street and High Street loop. There are 33 interlocking plants on the system, and all that have not already been renewed or modernized are expected to be either renewed or improved as rapidly as the work can be done.

The equipment is in good condition, much of it having been recently renovated. There is now available for service 352 motor cars and 268 electric trailers; also 33 open trail cars for steam operation. There are at the present time in the shop 62 motor cars and 46 trailing cars undergoing reconstruction. All cars are thoroughly swept daily after being in service; car windows are cleaned and washed every other day, and scrubbed every fifth day. No disinfectant is used.

#### *Recommendations.*

That all refuse that has accumulated at the foot of the latticed columns be removed; that the cracked angles on the Fifth Avenue line be promptly replaced and that portion of the structure carefully watched for others which may crack; that all loose rivets in connections be made tight; that necessary renewals of cross-ties be made and that inside guard timbers be placed on the entire structure as rapidly as possible; that the extending of station platforms be continued until all of those on the important lines are of sufficient length to accommodate six-car trains, and that necessary repainting of structure and stations be done.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with. (No. 2—1905.)

#### BUFFALO, ATTICA AND ARCADE RAILROAD.

(Inspected July 10 and 11, 1905.)

On July 10 and 11, 1905, I inspected the Buffalo, Attica and Arcade railroad, and respectfully submit the following report:

The Buffalo, Attica and Arcade railroad, single track and standard gauge, 28 miles in length and with approximately 2.25 miles of sidings and yard tracks, connects the Buffalo division of the Erie railroad at Attica and extends to a connection with the Western New York and Pennsylvania railroad (operated by the Pennsylvania Railroad Company) at Arcade Junction.

This railroad was last inspected in August, 1903; it was then in poor condition and has generally deteriorated since that time.

The road was originally fairly well graded and the grades generally light. The curves were also generally light, with maximum, aside from the one in Arcade yard, of about 9 degrees; the curve in the yard at Arcade is apparently about 22 degrees. Quite a portion of the road is through a territory where the soil is principally of clay and quicksand, and very many of the embankments have settled and continue settling and sliding; when filled with heavy material they almost immediately sink again, and only by filling with something very light, like locomotive cinders, can they be kept up. Through this same territory the slopes and cuts slide and wash, filling ditches and crowding the track out of line.

There is but one iron bridge; its length is about 35 feet and it is erected on concrete masonry; it has been put in since the last inspection. This bridge has no back walls and there is a piece of timber trestle at either end of it; there are no tie-guards or guard rail on the structure, and in case of derailment nothing to prevent the ties bunching and causing a bad accident. The masonry was constructed about two years ago for another bridge at Attica, but the bridge has not been erected and bents have been placed in the stream; on a portion of this temporary bridge there are iron I-beams and on the balance of it timber stringers; there are no guard timbers, and the present structure only a temporary one. There is one pony truss bridge near Attica; this bridge has one main brace decayed at the bottom—requiring removal; the balance of the bridge is in fair condition and rests on bents. Many small streams are crossed on pile or framed bent trestles, generally of hemlock timber, and in many cases the timber is old and partially decayed and shows unmistakable evidence of rapid failure. Trestles of similar character, of two of three spans and upwards, are used for cattle passes, undercrossings and in crossing small valleys. Many of the trestles have no guard timbers excepting small pieces of about 3x8 spiked on the tops, and many have ties very much decayed and on none of the structures are there inside guard rails. Nearly all open culverts and cattle passes are also constructed of timber and many of them need repairs or renewal. The attention of the superintendent of the railroad, who accompanied your inspector, was directed to the different structures requiring prompt repairs or renewal and the necessity urged for immediate attention. Since the last inspection several trestles have been filled; in some cases, however, sufficient waterway was not provided or the openings became clogged, and the embankments were partially washed out. At some of these places stringers have been put in on temporary blocking under one or both rails, which, in case of high water, are likely at any time to be carried away. On account of the condition of the structures and the temporary blocking under tracks the road is in very poor condition for operation, and unless very prompt repairs are made operating trains on the road should not be permitted, and if operated while such repairs are being made, it should be at a speed not exceeding 12 miles per hour.

The cross-ties on 27 miles of the road—from Arcade village to Attica—are in fair condition, not more than 10 per cent. of renewals being needed; on the remaining mile of the road—from Arcade village to Arcale Junction—about 50 per cent. of them are poor; this mile of road is expected to be abandoned when the Buffalo and Susquehanna railway is completed, and the tracks of that railroad are to be used between Arcade and Arcade Junction. The ties are laid at the rate of 2,640 to the mile of the track and are of oak, chestnut and cedar timber. About 2 miles of the track are laid with 56-pound, and the balance with 60-pound steel rail. The rail is considerably worn and some renewals are needed. The 56-pound rails are connected by angle plates 21 inches in length with 4 bolts, and the 60-pound rails by angle plates 22 and 24 inches in length with 4 bolts. A few track bolts were missing and many are loose. The main track switches are split point and have rigid stands—some without targets, and paint on those having targets is in many cases poor. Switch lamps are not used, night trains not being operated. Nearly all frogs are rigid and none are protected by foot-guards. Derailing switches were noted in sidings where their use



appears necessary. The alignment and surfacing of the track are poor. The track is lightly ballasted with gravel, much of which is of poor quality, and grass and weeds are growing plentifully between the ties, in some cases nearly obscuring the track. There are much grass, brush and weeds upon the right of way, none having been recently cut. Fences are not maintained, but at each farm crossing there are a guard fence and a pit cattle guard.

The highway crossings are fairly well graded, and in most cases planking in fair condition; a few places were noted where planking should be renewed. The crossing signs are of the "X" form; at a few crossings there were no signs, and some of those on places need repainting. Mile and whistle posts are not maintained. There are no overhead obstructions.

The entire section force caring for the 28 miles of railroad consist of 3 foremen and 11 laborers; these men have to care for the track and the structures as well, and the force is entirely inadequate for the requirements.

The station buildings are small, and in most cases old, but are clean and in fair repair.

The road owns 3 locomotives; one of them, however, has been scrapped and another is in the shop for repairs, leaving but 1 for operation. It has 1 coach, 2 combination cars, 2 box cars and 23 flat ones. All have automatic couplers, and all except the box and flat cars have air brakes. The cars observed are in fair condition. The passenger cars are supplied with drinking water and have emergency tools properly located; they are lighted with oil lamps. None of the employees are uniformed.

Since the last inspection a fair amount of renewals has been made to cross-ties; one new iron bridge has been put in, on concrete masonry, and masonry constructed for another iron bridge; a few of the smaller openings have been renewed and some repairs made to others and to trestles; a few trestles have been filled; the masonry to ends of several box culverts has been rebuilt or repaired with concrete; several iron tubes have been put in where filling has been done, and several covered with concrete, and other minor repairs have been made to embankments, etc.

#### *Recommendations.*

That necessary widening and ditching of cuts be done; that the weak and washed embankments be repaired; that the bridges, trestles, open culverts, cattle passes, etc., be promptly repaired or renewed; that missing track bolts be supplied and all made tight; that all switches be provided with stands with proper targets and the dim ones be repainted; that the frogs, guard rails and the heels of switches be protected by foot-guards; that the track be put in proper alignment and surface; that brush, grass and weeds on the right of way be cut and removed and the right of way fenced; that the necessary section and carpenter force be employed to put the track and structures in proper condition quickly; that until such time as the general condition of the road is greatly improved, the speed of trains be restricted to 12 miles per hour, and in the meantime all structures and bad places in the track be carefully watched; and that unless prompt and proper measures are taken to make the road reasonably safe, the operating of trains over it be discontinued.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that it would comply with the recommendations. (No. 15—1905.)

Another inspector subsequently reported as follows:

ALBANY, N. Y., October 20, 1905.

*To the Board of Railroad Commissioners:*

GENTLEMEN.—An inspection of the Buffalo, Attica and Arcade railroad was made by me on October 18, to ascertain whether or not the recommendations of your Board as stated in the report of Mr. Shultz, had been carried out.

The recommendations are:

1. That necessary widening and ditching of cuts be done and that the weak and washed embankments be repaired.

This recommendation has been partially carried out.

2. That the bridges, trestles, open culverts, cattle passes, etc., be promptly repaired or renewed.

Some work in this direction has been done, but much remains to be done.

3. That missing track bolts be supplied and all made tight.

Some bolts may have been supplied, but more are needed, while very many bolts are still loose.

4. That all switches be provided with stands with proper targets, and the dim ones repainted.

This has not been done.

5. That the frogs, guard rails and heels of switches be protected with foot-guards.

This has not been done.

6. That the track be put in proper alignment and surface.

The track, particularly on the eastern end, leaves much to be desired in this respect.

7. That brush, grass and weeds on right of way be cut and removed.

This has not been done.

8. That the right of way be fenced.

This has not been done.

9. That the necessary section and carpenter force be employed to put the track and structures in proper condition quickly.

No carpenter force has been employed. Recently six more section men have been put on, but the extra men are depositing concrete, and such repairs to structures as have been made have been done by the section gangs.

10. That until such time as the general condition of the road is greatly improved, the speed of trains be restricted to 12 miles per hour.

Only one train was observed during the inspection and that was near the western terminus, where the track is best. The speed of that train appeared to be in excess of 12 miles per hour.

I agree with Mr. Shultz that many of the structures are in imminent need of repairs, and conditions at several are such that, in my judgment, operation at these points is not safe.

It might be well, also, to call attention to the fact that at those structures where, for a space of 16 feet the track is supported by two 12x12 or two 12x14 timbers, the latter are greatly overstrained. The material is hemlock and a stress of 1,000 pounds on new hemlock should not be exceeded. Under the given live load a 12x12 timber is stressed to 3,000 pounds per square inch, and a 12x14 to 2,200 pounds—these being only live load stresses, dead load stresses not included. It must also be borne in mind that the material is old and much of it full of knots and wind shakes.

A copy of this additional report was sent to the company and a reply was received stating that work of repair was being carried on as fast as possible and that speed of trains had been limited to the required rate. (No. 15—1905.)

#### BUFFALO CREEK RAILROAD.

(Inspected July 9 and September 4, 1905.)

On July 9 and September 4, 1905, I made an inspection of the Buffalo Creek railroad and respectfully submit the following report:

The Buffalo Creek railroad connects with the East Buffalo yard of the New York Central and Hudson River railroad, and extends to Peck Slip, a distance of 4.20 miles, with 4.09 miles of second and 1.15 miles of third main track; a branch line connects with the main line at Pranatt street and extends on that street 0.80 of a mile; another branch line connects with the main line in South Buffalo and crossing to the Island, extends to near its westerly end, a distance of 0.82 of a mile; both branches are single tracks. The road is used as a freight line and connects practically all the railroads

entering Buffalo with the various docks, warehouses and industries along the lake front and on the southerly side of the city. Passenger trains of the Buffalo and Southwestern branch of the Erie railroad, and of the Buffalo, Rochester and Pittsburgh railroad operate over about one mile of the main line and, aside from that, no passenger trains are run. There are about nine miles of sidings and yard tracks.

The physical condition of the road is good. The curves are light and grades nearly level. The roadway is well graded and the drainage good. The steel and iron bridges are in good condition, have standard ties and guard timbers, in good repair, and are generally well painted; no inside guard rails are used. Two new steel bridges have been put in since the last inspection (June, 1903) eliminating grade crossings of Clinton and Howard streets, also the double track electric railroad grade crossing on Clinton street. The grade of the railroad has been raised for nearly half a mile, at and in the vicinity of the street crossings eliminated, and about 1,000 feet of concrete retaining wall built. The only timber trestle remaining consists of seven spans of tramed bents with timber stringers, standard ties and guard timbers all in good repair. The culverts and drains appear to be in good condition. A draw-bridge, across the ship canal, on the Island branch, is protected by semaphore signals interlocking with the mechanism that operates the draw and all trains are required to come to a full stop. The cross-ties, practically all oak, are 7x9 inches, 8 feet in length and laid at the rate of 2,992 to the mile of track; they are well spaced, full spiked and in sound condition. The main tracks are laid with 80-pound steel rail connected by angle plates 30 inches in length, with 6 bolts. The connections are full boltea and the bolts tight. The switches are split point and have rigid stands with proper targets, well painted. Most frogs are rigid. Frogs, guard rails and heels of switches are generally protected by foot-guards. The alignment of the surface of the tracks are very good and the outer rail on curves properly elevated for the moderate rate of speed at which the trains run. A fair quantity of gravel ballast is used. The following named railroads are crossed at grade: Two main tracks of the Lake Shore and Michigan Southern, in South Buffalo; the crossing is protected by an interlocking plant. One track of the New York, Chicago and St. Louis, and one track of the Western New York and Pennsylvania, side by side, in South Buffalo; the crossings are protected by a tilting board signal and all trains are required to come to a full stop before crossing. Two main tracks of the Delaware, Lackawanna and Western, in South Buffalo; the crossing is protected by disc signals located on a tower; all trains are required to come to a full stop before crossing. More than 400 trains and engines run over this crossing on the various roads each day; the Buffalo Creek has three tracks, the Western New York and Pennsylvania two tracks, and the New York, Chicago and St. Louis two tracks, all crossing the two tracks of the Delaware, Lackawanna and Western at this place and the movements of all the trains are governed by the disc signals above referred to; it is a dangerous crossing and should be eliminated by raising the tracks of the Delaware, Lackawanna and Western railroad so as to cross the other roads on a bridge. Four tracks of the Erie and two tracks of the Western New York and Pennsylvania, at East Buffalo; the crossings are protected by board signals located on a tower; all trains are required to come to a full stop before crossing. About 400 trains, or engines, run over those crossings daily and another track of the Western New York and Pennsylvania crosses the Erie about 300 feet distant and is governed by the same signals; all the crossings should be protected by an interlocking plant.

No fences are maintained or apparently necessary as no live stock is pastured in the vicinity of the railroad. The street crossings are in proper condition. The road owns no rolling stock. The locomotives are in good condition and have automatic couplers and air brakes.

#### *Recommendations.*

That inside guard rails be put on all the bridges and trestles; that the remainder of the frogs, guard rails and heels of switches be protected by foot-guards; that the grade crossing of the Delaware, Lackawanna and

Western railroad be eliminated by raising the grade of that railroad and carrying the tracks overhead, on a bridge, and that the grade crossing of the Erie and Western New York and Pennsylvania be protected by an interlocking plant.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the frogs, switches and guard rails will be attended to. Regarding the grade crossing of the Delaware, Lackawanna and Western railroad, the roads are endeavoring to agree upon a plan to eliminate this crossing.

#### BUFFALO CREEK TRANSFER RAILROAD.

(Inspected September 4, 1905.)

The Buffalo Creek Transfer railroad consists of a series of switching tracks connecting with the western end of the Buffalo Creek railroad, on the island south of Buffalo, in the coal yard of Frank Williams & Company. The road is used only for handling the business of the coal company, and is in suitable conditions for that service. The company has one small locomotive for shifting cars about the yard and has no rolling stock.

A copy of this report was sent to the company. (No. 38—1905.)

#### BUFFALO AND SUSQUEHANNA RAILROAD.

(Inspected July 18 and 19, 1905.)

On July 18 and 19, 1905, I inspected the portions of the Buffalo and Susquehanna railroad in the State of New York, and respectfully submit the following report:

The portions of the Buffalo and Susquehanna railroad in this State consist of the Wellsville, Coudersport and Pine Creek railroad, from Wellsville, on the line of the Erie railroad, to the Pennsylvania State line, near Genesee, 10.11 miles, and the Addison and Susquehanna railroad, from Addison, on the line of the Erie railroad, to the Pennsylvania State line, near Nichols, a distance of 10 miles. Both are single track, standard gauge railroads.

The general alignment of the Wellsville, Coudersport and Pine Creek railroad is fair and most of the curves light, and arrangements are made for and work commenced on changing and improving the alignment in the vicinity of Wellsville. The Addison and Susquehanna railroad is very crooked, curves frequent and very sharp, the maximum being about  $19\frac{1}{2}$  degrees. The grades of the Wellsville, Coudersport and Pine Creek railroad are generally light and fairly regular; on the Addison and Susquehanna railroad the grades are long and somewhat broken, though not generally steep. Some of the cuts on the Wellsville, Coudersport and Pine Creek railroad are rather narrow and slopes steep; the ditches are somewhat filled in places and some embankments are weak. On the Addison and Susquehanna railroad the cuts and embankments are generally of fair width and the ditches in good condition.

All the bridges on both roads are of steel or iron, in very fair condition excepting that they would be benefited by an additional coat of paint. On the Wellsville, Coudersport and Pine Creek railroad a portion of the bridge floors need renewing. Inside guard rails are not maintained. The trestle bridges on the Wellsville, Coudersport and Pine Creek railroad, while of standard construction, are getting old and many of them will need renewal soon; the change in the line of the road will eliminate some of them, and your inspector is informed arrangements are made for replacing or renewing the others, as necessary. On the Addison and Susquehanna railroad there is but one trestle bridge; that is a flood opening near Addison; the bents are of piles and, the ground being very soft, the piles get out

of line; arrangements are made for cutting off the piles and putting on framed bents; this will be a decided improvement and should be done promptly. Practically all the open culverts and cattle passes on both lines are entirely of wood; they are of proper construction and have sufficient timber; those on the Wellsville, Coudersport and Pine Creek railroad are getting old and the timber somewhat decayed;—these will need renewal soon. There are no arch culverts. The stone box and iron pipe culverts are in proper condition. Some wooden box culverts yet remain; these are apparently in proper condition.

The cross-ties—mixed oak, chestnut and pine—are of standard dimensions, very well spaced and full spiked; extensive renewals have been made and they are now in very fair condition.

The main tracks are laid with 80-pound steel rail; those on the Addison and Susquehanna railroad and a portion of those on the Wellsville, Coudersport and Pine Creek railroad are connected by angle plates 26 inches in length with four bolts, and the remainder by angle plates 40 inches in length with six bolts. The rail is in fair condition, angle plates full bolted and bolts tight. All main track switches are split point; automatic and rigid stands are both in use and have proper targets, well painted. Switch lamps show red light for danger and white for safety. The main track frogs are spring rail. A portion of the frogs, guard rails and heels of switches are protected by foot-guards. Derailing switches are in sidings where their use is necessary. The tracks are lightly ballasted with gravel, cinders and shale. Some new ballasting has been done on the Wellsville, Coudersport and Pine Creek railroad and a large amount of additional ballast is now distributed. The alignment and surfacing of tracks have been improved and the outer rail on curves correctly elevated for the speed at which the trains are scheduled.

Grass and weeds on the right of way are now being cut; there is some small brush remaining. The fences are of wire and considerably out of repair. The highway crossings are properly graded, planking in good condition, and are protected by signs of the diamond form, properly located and well painted. Practically all cattle guards are lacking. Mile and whistle posts are maintained on the Addison and Susquehanna railroad, and whistle posts on the Wellsville, Coudersport and Pine Creek railroad. There are no overhead obstructions less than 20 feet above the rail.

On the Addison and Susquehanna railroad the track sections are about  $5\frac{1}{2}$  miles in length; on the section which includes Addison yard the track force consists of a foreman and eight laborers and on the remaining section, of a foreman and four laborers. On the Wellsville, Coudersport and Pine Creek railroad the sections are about 7 miles in length, and the force employed on each consists of a foreman and five laborers. Each section gang is provided with the necessary appliances for protecting their work. Regular track-walkers are not employed, but all portions of the road are patrolled daily by some member of the force.

The movements of trains are governed by the telegraphic train order system.

The station buildings are in fair condition and properly furnished. Water for drinking is provided and timetables are posted in the waiting room.

The equipment is in first-class condition—equipped with automatic couplers and air brakes. The passenger cars are heated by steam and lighted with oil lamps. Water for drinking is furnished and emergency tools are properly located in the center of the cars. All passenger trainmen wear uniform.

#### *Recommendations.*

That the necessary widening and ditching of cuts be done and the weak embankments be reinforced; that the timber structures on the Wellsville, Coudersport and Pine Creek railroad be renewed promptly, as necessary; that the poor ties on bridges be replaced, and inside guard rails maintained on all bridges and trestles; that the pile trestle on the Addison and Susquehanna railroad be put in proper condition promptly; that the wooden box culverts be replaced with masonry culverts or pipe drains as

rapidly as renewal becomes necessary; that all brush on the right of way be cut and removed, fences put in proper repair, and cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that many of the recommendations had already been complied with and all others will receive prompt attention. (No. 21—1905.)

#### CATSKILL MOUNTAIN RAILWAY.

(Inspected June 28, 1905.)

On June 28, 1905, I inspected the Catskill Mountain railway, and respectfully submit the following report:

The Catskill Mountain railway is a single track, 3-foot gauge railroad. The main line extends from Catskill Landing, on the Hudson, to Palenville, 15.75 miles, and it has a branch line extending from Cairo Junction, on the main line, to Cairo, a distance of 3.77 miles. The road is very crooked for much of its length; the maximum curve is about 28 degrees, located near the third crossing of the Catskill. The grades are long, somewhat broken, and in places steep; the maximum of the main line is about 125 feet per mile, near Palenville, and on the Cairo branch, 135 feet per mile, for a distance of about  $\frac{1}{2}$  of a mile, half way between Cairo Junction and Cairo.

The steel and iron bridges are generally in good condition except that they should be repainted to prevent injury from rust. What is known as the third bridge over the Catskill, consisting of two spans of pin-connected through trusses, is considerably out of adjustment and needs attention. The attention of the officials of the railroad was directed to this matter and promise given that it would receive prompt attention. There are no wooden bridges excepting overhead highway bridges, and these are properly cared for. There are no timber trestles. The open culverts and cattle passes are in good condition, as are also arch and box culverts and iron pipe drains. The masonry to all the structures is in very fair condition and repairs are being made where necessary. The bridge, culvert and cattle pass floors are standard and in good repair. Inside guard rails are maintained on the long bridges.

The cross-ties are evenly spaced and full spiked and are in sound condition, necessary renewals having been made; approximately 25 per cent. have been renewed since the last inspection (July, 1903). The rail—40-pound steel—is somewhat worn, but is in fair condition for the light traffic and moderate speed at which trains are scheduled. The rails are connected by angle and fish plates and continuous rail joints 17 inches in length with four bolts. All connections are full bolted and bolts tight. The main track switches are split point and have rigid stands with suitable targets, well painted. No switch lamps are used. All frogs are rigid, and the frogs, guard rails and heels of switches are protected by foot-guards. Derailing switches are in sidings where their use is necessary. The alignment and surfacing of track are very good, and the outer rail on curves properly elevated. The track is lightly ballasted with gravel.

The right of way is clear and clean and fenced with wire, which is in fair repair. The highway crossings are properly graded, well planked, and protected by signs of the triangular form, properly located and well painted. Metallic slat cattle guards, with proper guard fences, are maintained at each boundary of all the highways crossed. Mile posts are not maintained. Whistle posts are at the prescribed distance from the highway crossings.

The maintenance force consists of two foremen and twenty laborers. Each gang is furnished with the necessary appliances for protecting their work.

The movements of trains are governed by train orders issued by telephone.

The station buildings are in fair repair and properly furnished.

The motive power and rolling stock are in good condition, all equipped with automatic couplers and vacuum brakes. Station and passenger train employees are uniformed. The road owns four locomotives, the heaviest of which weighs about 28 tons, 4 baggage, 12 passenger, 10 flat and 4 box cars.

#### *Recommendation.*

That No. 3 bridge over the Catskill be promptly adjusted.

A copy of this report was sent to the company with a letter making the recommendation in the report the recommendation of this Board. The company informed the Board that the recommendation had been complied with. (No. 12—1905.)

#### CATSKILL AND TANNERSVILLE RAILWAY.

(Inspected June 27, 1905.)

On June 27, 1905, I inspected the Catskill and Tannersville railway, and respectfully submit the following report:

The Catskill and Tannersville railway is single track and 3-foot gauge; it extends from a connection with the Otis railway at Otis Summit to Tannersville, 5.5 miles.

The road is very crooked; curves are frequent and sharp, with a maximum of about 20 degrees. The grades are very steep and much broken; the maximum grade is approximately 264 feet per mile. Some widening of cuts and embankments has been done since the last inspection was made (July, 1903); a portion of the cuts are still somewhat narrow, and embankments weak. Ditches have been very much improved and the roadway is generally fairly drained.

There are no steel or iron bridges in the roadway, and the only wooden bridge is an overhead structure at Otis Summit, which is in proper condition. There are three timber trestles, two of them consisting of 8 spans each, and one of 13 spans; they are of yellow pine and Virginia pine timber and of standard construction; the bents have masonry foundation. They are in proper repair, but the stringers and ties are beginning to get old, and renewal of the floor systems will be needed in the near future. At No. 3 trestle, located near Laural House station, the masonry abutment at the easterly end is settling and sliding forward, having been erected on insecure foundation. This settlement and sliding movement also affect the piers on the easterly slope, and both the abutment and the piers will need to be rebuilt or new footing of concrete put in soon. There are six open culverts and cattle passes, with fair class of masonry and timber stringers of suitable dimensions, standard ties and guard timbers, in good condition. The box and iron pipe drains are apparently in good condition.

The cross-ties are 6x6 and 6x8 inches, 6 feet in length, and laid at the rate of 2,816 to the mile of track; they are fairly well spaced and full spiked. Some renewals have been made, and ties distributed for additional renewals. Very extensive renewals will be needed within the coming year. The track is laid with mixed 40 and 46-pound steel rail, connected by angle and fish plates 18 and 21 inches in length with four bolts. The rail is in fair condition for the light motive power and rolling stock used. The connections are full bolted and practically all bolts tight. All switches are split point; rigid and automatic stands are both used. The frogs are rigid, and frogs and guard rails are protected by foot-guards. The track is very lightly ballasted with gravel and shale. The alignment and surfacing of the track are fair and the outer rail on curves properly elevated for the moderate speed at which the trains are scheduled.

The right of way has been pretty thoroughly freed from trees, brush and rubbish. The fences are of wire they have been somewhat improved, but

are in poor condition generally. The highway crossings are fairly graded and protected by signs of triangular form, which are properly located and well painted. Metallic slat cattle guards have been put down, but in most cases guard fences are lacking.

The section force consists of a foreman and five laborers.

Small station buildings are maintained at Otis Summit, Haines Corners and Tannersville; at other places where trains stop only covered sheds are provided. It was observed that at the stations practically all the waiting room was occupied by freight, and it is evident that proper freight houses should be provided or the stations enlarged to make room for both the freight and passengers, the passengers being now very much discommoded on account of freight being piled in the waiting rooms.

The equipment consists of two small locomotives, weighing about 25 tons each, 2 combination passenger and baggage cars, 1 freight car and 1 flat car. Two small box cars and two gondolas of 5 tons capacity belonging to the Otis Railway Company are also operated over this line. All the equipment has automatic couplers and air brakes. The passenger cars are lighted with oil lamps and are provided with emergency tools properly located. The road is operated only during the summer season; therefore heat in the cars is not required.

#### *Recommendations.*

That additional widening of cuts and strengthening of embankments be done where necessary; that necessary renewals of stringers and ties be made to the trestle structures; that the masonry to trestle No. 3 be given proper attention; that the fences be put in proper repair and that proper guard fences be constructed at each boundary of the highways crossed; that the present station buildings be enlarged or additional provision made for freight, that the present waiting rooms may be kept in suitable condition for waiting passengers.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that changes would be made to conform to recommendations and that everything would be made to the satisfaction of the Board with the opening of the season. (No. 10—1905.)

#### CHAMPLAIN AND ST. LAWRENCE RAILROAD.

(Operated by Grand Trunk Railway Company.)

(Inspected August 16, 1905.)

On August 16, 1905, I inspected the Champlain and St. Lawrence railroad, and respectfully submit the following report:

The Champlain and St. Lawrence railroad, a single track, standard gauge line, connects with the southern terminus of a branch of the Grand Trunk railway at the Canada line, and extends to a connection with The Delaware and Hudson Company's railroad at Rouses Point, a distance of 1.21 miles, and has about 1.5 miles of sidings and yard tracks.

This piece of railroad is mostly on tangent, there being but one curve, and that light. The grades are practically level. The roadway—all on embankment—is properly graded.

There are no bridges, but three openings to grade,—waterways of from 4 to 7 feet span—are constructed entirely of timber, the abutments being of cedar and the stringers of pine; they are in good condition, have proper ties and guard timbers.

The cross-ties are evenly spaced, full spiked and are sound; all are of cedar timber and the number used to a rail length varies from 16 to 20, the larger number being used on the curves.

The track is laid with 79-pound steel rail, connected by angle plates 24 inches in length with four bolts. The rail is in good condition, all con-



nections full bolted and bolts tight. The switches are split point with automatic stands and proper targets. Both rigid and spring rail frogs are used, and all frogs and guard rails are protected by foot-guards. Blocks secured to the top of the rails are used in place of derailing switches on sidings where cars are left standing. All outlying switches are protected by distant signals which are interlocked with the switch stands. The alignment and surfacing of track are first-class and the track is well ballasted with gravel.

The right of way is clear and clean and well fenced with wire. No highways are crossed. There is one open pit cattle guard with proper guard fence at the boundary of a highway, near the southerly edge of which is the international boundary line. Mile and whistle posts are maintained.

The road has no passenger stations. The regular Grand Trunk equipment is used and is in proper condition.

No recommendations appear necessary.

A copy of this report was sent to the company. (No. 33—1905.)

• **DANSVILLE AND MOUNT MORRIS RAILROAD.**

(Inspected July 12, 1905.)

On July 12, 1905, I inspected the Dansville and Mount Morris railroad, and respectfully submit the following report:

The Dansville and Mount Morris railroad, a single track, standard gauge line, extends from the southerly terminus of the Mount Morris branch of the Erie railroad at Mount Morris, to Dansville, 14.6 miles; 2.35 miles, from Mount Morris at Sonyea, are leased from the Erie Railroad Company and the balance of the line is owned by the Dansville and Mount Morris Railroad Company.

Owing to poor physical condition, this road was frequently examined during the year 1904, the last examination being made on August 25. At that time the road had been greatly improved, so that it was considered safe, for the manner in which it was operated. Since that time improvements have been continued, and the road is now in much better physical condition than when last examined.

The grades, while somewhat broken, are generally light; there is for a short distance, near the Dansville end of the road, a grade of 104 feet per mile. The curves are infrequent and light; the maximum is 4 degrees. A portion of the cuts have been widened and embankments have been reinforced; there are still some cuts and embankments that are rather narrow; and additional widening is needed. The ditches have been generally improved and are in fair condition.

The iron bridges are in very good condition; several new ones have been put in, replacing trestle bridges; the larger ones have been erected on concrete masonry, the smaller ones on timber and pile bents. The bridge floors are in good repair. Inside guard rails are not maintained. A large proportion of the framed and pile bent trestles have been renewed, extensively repaired, or replaced with iron, and are now in good repair. Most open culverts and cattle passes are entirely of wood; extensive repairs and renewals have been done to them also. The box culverts and iron pipe drains are suitably maintained.

Extensive renewal of cross-ties has been made and they are now in very fair condition; the standard dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,640 to the mile of track; approximately 80 per cent. of them are oak and the balance mixed yellow pine, cedar and chestnut. The track is laid with 60-pound steel rail, connected by angle plates 24 inches in length with four bolts. The rail is not generally in first-class condition, but is fair for the light traffic and slow speed maintained. All angle plates are full bolted and very few loose bolts were observed. All main track switches excepting those in Dansville yard are spit point; all have rigid stands with targets properly painted. The frogs are rigid. No frogs guard, rails or heels of switches are protected by foot-

guards. The alignment and surfacing of the track are fair and the outer rail on curves about correctly elevated for the moderate speed at which trains run. The track is very lightly ballasted with gravel. Much of the grass and weeds has been removed from between the ties; considerable, however, still remains.

Brush, grass and weeds on the right of way are now being cut. The fences are of wire and in poor repair. The highway crossings are very well graded, properly planked, and protected by signs of the diamond form, suitably located and well painted. Cattle guards are not maintained. Whistle posts are at the prescribed distance from the highway crossings. There are no overhead obstructions.

The maintenance force consists of two foremen and twelve laborers; they are furnished with proper appliances for protecting their work.

The only station buildings maintained are at Dansville and Sonyea; these are frame buildings and in good repair, properly furnished and suitable for the requirements.

The motive power and rolling stock are in fair repair all have automatic couplers and air brakes.

The principal improvements noted as made during the year 1904 and up to the present time in 1905 are as follows The cuts and embankments have been widened, track resurfaced and much of the grass and weeds removed; about 30 per cent. of cross-ties have been renewed; trestle bridges Nos. 2, 14, 19, 23, 30, 31, 33 and 34 have been replaced with iron girders erected on timber abutments and framed or pile bents; No. 38 has been replaced with three spans of a wooden pony truss bridge on concrete masonry; bridge No. 7, a pony iron truss, has had pile abutments replaced with concrete masonry; practically all the other trestle bridges, open culverts and cattle passes, of which there were in the entire road 38, have been entirely rebuilt or extensively repaired and all are now in safe condition;—additional repairs and renewals, however, will be needed in the near future, and are arranged for; a new roundhouse for locomotives has been built at Dansville, and a new wooden turntable constructed at that place; two iron bridges have been repainted; nearly the entire track has been raised six inches or more, and one new locomotive has been purchased.

#### *Recommendations.*

That necessary widening of cuts and embankments be done, and the remaining ditches cleaned; that the stub switches be replaced with split point switches; that the frogs, guard rails and the heels of switches be protected by foot-guards; that the right of way be properly fenced, and cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with this year. (No. 17—1905.)

#### ERIE RAILROAD.

I have made an inspection of the portions of the various lines of railroad owner, leased and operated by the Erie Railroad Company in this State, commencing September 27 and extending to October 6, 1905, and respectfully submit the following report:

The general condition of the Erie railroad property shows continued improvement. The extensive damage done the roadway and bridge structures on portions of the New York, Delaware and New Jersey and New York divisions about October 1, 1903, by freshet has been entirely repaired and the roadway made stronger and better than it was before the freshet. Extensive retaining and slope walls were built in very many places to protect against the streams which did the damage. The bridges have been restored and, in cases where necessary, openings made wider. The channels of the streams in the vicinity of the road have been cleared and made larger

and the roadbed generally stronger than before, and in some cases the grade raised higher above the level of the streams, the work all being thoroughly and intelligently executed. In addition to this the roadway has been generally improved, ditches made better, much rebalasting done, cross-ties extensively renewed, and are now in better condition than at any time since your inspector has been connected with the Board. Much new and heavy rail has been laid, replacing worn and lighter rail; new and modern interlocking plants have replaced older ones, and some additional ones have been put in; the block signal system has been extended; the equipment has been very well kept up and much new added. All locomotives and cars have automatic couplers, and 88 per cent. air brakes. The coaches are generally clean and neat, water for drinking is provided, they are heated by steam and lighted with oil and gas lamps. Fire extinguishers are provided and the necessary flags, lanterns and torpedoes furnished all trains. The locomotives of the Wooten fire-box pattern, where the cabs of the engineman and fireman are separated, are furnished an emergency valve within reach of the fireman, so that he may apply the air brakes if necessary, and also a gong signal connecting the engineman's cab with the rear boiler head.

Since the last inspection, which was completed October 1, 1903, there have been added to the equipment 298 locomotives of the various types, 89 passenger, baggage, express, postal and milk cars, 60 cabooses, 1,843 box cars, 3,001 gondolas, 1,001 hopper cars, 100 convertible ballast cars, 500 refrigerators, 259 flat cars, 3 ballast distributing plows, 3 steam shovels, 1 rotary snow plow, 3 locomotive cranes and 2 steam derricks.

*New York Division—main line.*

(Inspected September 27, 28 and 29, 1905.)

The portion of the main line in this State extends from the New Jersey State line, near Suffern, to Sparrowbush (at west end of Port Jervis yard), a distance of 60.077 miles, all double track, and has 0.953 miles of third and fourth main track, located at easterly end of the line. All main tracks are laid with 90-pound steel rail, connected by angle plates 30 inches in length with six bolts and 24 inches in length with four bolts. The rail is in good condition, all angle plates full bolted and bolts tight. There are on the division 92.45 miles of sidings and yard tracks.

The cross-ties—about 95 per cent. yellow pine and the balance white oak—are 7x9 inches, 8½ feet in length and laid at the rate of 2,816 to the mile of track; they are in good, sound condition, evenly spaced and full spiked.

The maximum curve in main track is 6 degrees and 50 minutes, located west of Goshen; the maximum grade is 60 feet per mile, about two miles east of Otisville. The roadway is well graded and properly drained; sub-drains are extensively used in wet cuts.

The bridges—all steel or iron—are in good condition and have good masonry; several have recently been renewed and others which are considered light for the class of motive power and rolling stock the company desires to use are to be renewed as promptly as possible. Several of the bridges should be repainted. The ties and guard timbers are of standard dimensions and in good repair. Inside guard rails are maintained on the long and high bridges and on all bridges on curves. There are no wooden bridges or trestles remaining in the roadway. The overhead bridges for highways, etc., are generally of iron and are in proper repair. All open culverts and cattle passes have good masonry, I-beam stringers and standard floors, well maintained. The arch and box culverts and iron pipe drains are apparently in good condition. All main track switches are split point and where not connected with interlocking, have automatic stands. Outlying switches are electrically locked. Switch and semaphore lamps on this and all other portions of the division show red light for danger and white for safety. The main track frogs are spring rail. Derailing switches are in all sidings connecting with main track, upon which cars are left standing, where the grade descends toward the main track, and nearly all are connected with the main track switch by interlocking, and where not, the

stands are furnished with proper targets. The alignment and surfacing of track are first-class and the outer rail on curves properly elevated. The tracks are well ballasted with gravel.

One track of the Middletown-Goshen Electric railway crosses at grade at Middletown; the conductors of the electric railway are required to pilot their cars across the track of the steam railroad.

The right of way is clear and clean and generally fenced with wire, to which considerable repairs are needed. The highway crossings are well graded, properly planked, and protected by signs of the diamond or "X" form, properly located and well painted. The cattle guards are of the wooden slat pattern; some are lacking and many out of repair. Five highway crossings are protected by flagmen, 10 by flagmen and gates, 14 by electric bells and 68 by crossing signs only. Mile posts are maintained and the whistle posts are properly located. All overhead obstructions are protected by warning signals.

The track sections average  $4\frac{1}{2}$  miles in length of the road and the force maintained upon each consists of a foreman and eight laborers. Each section gang is furnished with flags, lanterns and torpedoes. All portions of the road are patrolled daily.

Interlocking plants are maintained at Suffern, Ramapo, Sterlington, West Tuxedo, Arden, Newburgh Junction, Top Oxford, Greycourt, Chester, East Goshen, Goshen, West Goshen, West Hampton, Middletown, Middletown Summit, Howell's, Otisville, Guymard and Sparrowbush. The movement of trains between Suffern and Newburgh Junction is governed by the Sykes lock and block system, and on the remainder of the line by the bell code system.

The station buildings are generally in good repair and well painted. The platforms are of cement, plank and gravel. Water for drinking is provided and timetables are posted in the waiting rooms. The station at Turner is a very old building, out of repair, and should be replaced. The station employees are uniformed.

Since the last inspection (October, 1903) approximately 20 per cent. of the cross-ties have been renewed; 4.06 miles of new 90-pound steel rail have been laid, replacing worn 90-pound rail; bridges Nos. 32.10, 33.51, 38.03, 38.98, 42.77, 45.90, 47.35, 51.75, 55.27, 61.55, 61.73, 64.90, 65.55, 65.87, 74.04, 74.80, 82.14 and 83.86 have been replaced with new and stronger bridges, and No. 41.41 by stone arch and filling; necessary repairs have been made to the masonry of the bridges replaced, also to the abutments of No. 15 $\frac{1}{2}$ ; all the new bridges have been painted; new engine houses have been erected at Suffern and Turner and a new freight house at Goshen; about 14.7 miles of fence have been repaired and 9 miles replaced with new fence; one set of pneumatic gates has been erected at James street, Middletown; additional water facilities have been installed at Sterlington; interlocking plants at Ramapo, New Hampton and Otisville have been enlarged, and one highway grade crossing east of Turner eliminated by making it an undergrade crossing.

#### *Recommendations.*

That necessary repainting of bridges be done to prevent injury from rust; that the fences be put in proper repair; that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade, and that a new station building be erected at Turner.

#### *Newburgh Branch.*

(Inspected September 28, 1905.)

The Newburgh branch extends from a connection with the main line at Greycourt to Newburgh, a distance of 18.731 miles, and has 6.330 miles of second main track, the second main track extending from Vail's Gate Junction to Newburgh; there are 13.262 miles of sidings and yard tracks.

Three miles of main track are laid with 80-pound, and the balance with 74-pound steel rail. The 80-pound rails are connected by angles plates 30 inches in length with six bolts and the 74-pound rails by angle plates 40

inches in length with six bolts. The rail is in very fair condition, all connections full bolted and bolts tight.

The cross-ties—all yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; they are in good condition, evenly spaced and full spiked. The maximum-curve in the main track is 5 degrees, located between Vail's Gate and Salisbury Mills. The maximum grade is 65 feet per mile, for about 2½ miles ascending from Newburgh. The roadway is properly graded and well drained; subdrains are used in wet cuts.

The bridges are in good condition; a few of them are rather light, but are sufficient for the class of motive power and rolling stock used. One viaduct, located at Newburgh, is very light and is supported on bents pending renewal. A few bridges should be repainted to prevent injury from rust. The masonry is in very fair condition. The bridge floors are standard and in good repair. Inside guard rails are maintained on all long ones. There are no wooden bridges remaining in the roadway. There is at Greycourt a timber trestle of 8 spans; it is of standard construction but getting old, and should be replaced or renewed. The overhead bridges are in proper repair. The masonry to a few of the open culverts and cattle passes is poor and should be rebuilt. These and all other defects on this and all other portions of the road were pointed out by your inspector to the officials in charge of them and the assurance given that they would receive necessary attention. All the open culverts and cattle passes have I-beam stringers and standard floors, in good repair. The arch and box culverts and iron pipe drains are in good condition. All main track switches are split point and have stands automatic for main track. High targets are used at outlying switches and at obscure places. The main track frogs are spring rail. Derailing switches are in all sidings where their use is necessary. The alignment and surfacing of track are good, and the outer rail on curves properly elevated. The track is ballasted with gravel and cinders in fair quantity.

No railroads, steam or electric, are crossed at grade.

The right of way is clear and clean. Fences are of wire, board and stone wall, and some repairs are needed. The highway crossings are in proper condition and protected by signs of the diamond or "X" form, properly maintained. Most cattle guards are lacking. Two highway crossings are protected by flagmen and one by an electric bell. Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The track sections are approximately 5 miles in length and the force employed upon each consists of a foreman and six laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the track are patrolled daily.

Interlocking plants are maintained at Greycourt and Vail's Gate Junction. The movement of trains are governed by the bell code block system.

The station buildings are in good repair, are similarly furnished to those on the main line and the same remarks apply.

Since the last inspection (October, 1903) approximately 20 per cent. of the cross-ties have been renewed; about one mile of track has been reballasted; bridge No. 12, west of Vail's Gate, has been replaced with a stronger structure; necessary repairs have been made to masonry and to bridge, open culvert and cattle pass floors; one abutment to bridge No. 5, near Washingtonville, has been rebuilt; a new 65-foot turntable has been put in at West Newburgh, replacing a shorter, lighter table; necessary repairs have been made to station and other buildings, and light repairs to fences.

#### *Recommendations.*

That necessary repainting of bridges be done; that the trestle at Greycourt be rebuilt or replaced; that necessary repairs and renewals be made to the masonry of open culverts and cattle passes; that the fences be put in proper repair, and cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade.

*Newburgh and New York Branch.*

(Inspected September 27, 1905.)

The Newburgh and New York branch connects with the main line at Newburgh Junction, and extends to a connection with the Newburgh branch at Vail's Gate Junction, a distance of 12.642 miles, single track, and has 1.94 miles of sidings.

Twelve and twenty-four one hundredths miles of main track are laid with 63-pound, and the balance with 74-pound steel rail. The 63-pound rails are connected by angle plates 24 inches in length with four bolts, and the 74-pound rails by angle plates 30 inches in length with six bolts. The rail is in very fair condition, all connections full bolted and the bolts tight.

The cross-ties—all yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track.

The maximum curve is 4 degrees, located at Highland Mills. The maximum grade is 50 feet per mile, between Cornwall and Vail's Gate Junction. The roadway is well graded and thoroughly drained; subdrains are used in wet cuts.

All bridges are steel or iron; some of them are light and on bents pending renewal; the paint on several should be renewed. The masonry is very fair, bridge floors standard and in good repair. Inside guard rails are maintained on the long bridges. There are no wooden structures remaining in the roadway. Overhead bridges are properly maintained. Some masonry to open culverts and cattle passes needs repairs or renewal. All the stringers are I-beams; the floors are standard and well maintained. The arch and box culverts and iron pipe drains are apparently in good condition. The main track switches are split point and have stands automatic for main track. High targets are used at outlying switches and in obscure places. Nearly all frogs are spring rail. Derailing switches are in all sidings where their use is necessary. The alignment and surfacing of track are first-class and the outer rail on curves properly elevated.

No railroads, steam or electric, cross at grade.

The right of way is thoroughly clean and fenced with wire, board and stone wall, in fair repair. The highway crossings are in proper condition and protected by signs of the diamond or "X" form. Cattle guards are of the wooden slat pattern; some are lacking and others in poor repair. Three highway crossings are protected by electric bells. Mile and whistle posts are maintained. All overhead obstructions are protected by warning signals.

The average length of the track section is 6 miles, and the force maintained upon each consists of a foreman and four laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the road are patrolled daily.

The only interlocking plants maintained are at the junction with the main line at Newburgh Junction and with the Newburgh branch at Vail's Gate. The movements of trains are governed by the telegraphic train order system.

The station buildings are in very good repair and furnished similarly to those on the main line and the same remarks apply.

Since the last inspection (October, 1903) approximately 20 per cent. of cross-ties have been renewed; necessary repairs have been made to bridge, open culvert and cattle pass floors, also to the station buildings; a new station has been erected at Highland Mills, and some repairs made to fences.

*Recommendations.*

That the necessary repainting of bridges be done to prevent injury from rust; that repairs or renewals be made to open culvert and cattle pass masonry where necessary; and that cattle guards with suitable guard fences be maintained at each boundary of all highways crossed at grade.

*Montgomery Branch.*

(Inspected September 28, 1905.)

The Montgomery branch, a single track line, extends from a connection with the main line at Goshen to a connection with the Walkill Valley

railroad at Montgomery, a distance of 10.43 miles, and has 2.601 miles of sidings and yard tracks.

Five miles of main track are laid with 74-pound, and the balance with 63-pound steel rail. The 74-pound rails are connected by angle plates 40 inches in length with six bolts, and the 63-pound by angle plates 24 inches in length with four bolts. The 63-pound rail is considerably worn; the 74-pound rail is second use rail, taken from main line, and has been put in since the last inspection;—it is in fair condition for the light traffic maintained. All connections are full bolted and very few loose bolts were observed.

The cross-ties—all yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track.

The general alignment is good; maximum curve is 3 degrees, located at Neelytown. The maximum grade is 40 feet per mile, for 1¼ miles north of Goshen.

The roadway is properly graded and very well drained; some subdrains are used in wet cuts.

There is but one bridge in the roadway; it is a deck plate girder, located in Goshen yard; it is in proper condition, has good masonry, standard ties and guard timbers, properly maintained. There are no wooden structures in the roadway. The masonry to a few of the open culverts and cattle passes is in poor condition and the stringers are supported on bents on account of the poor masonry. It is contemplated rebuilding the masonry to some and eliminating other openings by putting in iron pipe and filling. Most of the open culverts and cattle passes have timber stringers; a few have I-beams; all are of suitable dimensions and are in proper condition. The ties and guard timbers are standard and in proper repair. The arch and box culverts and iron pipe drains are apparently in good condition. Most main track switches are split point; a few Wharton switches yet remain. The Wharton switches have rigid stands, and the split point, stands automatic for main track. Most frogs are spring rail. Derailing switches are in sidings where their use is necessary. The alignment and surfacing of track are fair and the outer rail on curves about correctly elevated for the speed at which trains run. Ballast is of gravel and cinders, generally in fair quantity, and has been decidedly improved since the last inspection. Additional ballast is distributed and being put in track.

Two tracks of the New York, Ontario and Western railway cross at grade at Campbell Hall; the crossing is protected by home and distant signals, interlocked, and operated from a tower; all trains are required to come to a full stop before crossing.

The right of way is clean and fenced with wire and board, in fair repair. The highway crossings are in proper condition and protected by signs of the diamond or "X" form. Cattle guards are of the wooden slat pattern; some are lacking and others in poor repair. One highway crossing is protected by flagman and gates. Mile and whistle posts are maintained. All overhead obstructions are protected by warning signals.

The track sections are about 7 miles in length, and the force employed on each consists of a foreman and six laborers. Each gang is supplied with flags, lanterns and torpedoes. All portions of the track are patrolled daily.

No interlocking plants are maintained except at the crossing of the New York, Ontario and Western railway at Campbell Hall and the junction with the main line at Goshen. The movements of trains are governed by the telegraphic train order system.

The station buildings are in fair repair and furnished similarly to those on the main line, and the same remarks apply.

Since the last inspection (October, 1903) approximately 20 per cent. of the cross-ties have been renewed; 5 miles of second use 74-pound steel rail have been laid, replacing worn 63-pound rail; 5 miles of track have been reballasted with cinders; light repairs have been made to station buildings, and some repairs to fences.

*Recommendations.*

That the masonry to open culverts and cattle passes be put in proper condition, and that cattle guards with suitable guard fences be maintained at each boundary of all highways crossed at grade.

*Pine Island Branch.*

(Inspected September 28, 1905.)

The Pine Island branch, a single track line, extends from a connection with the main line at Goshen to Pine Island, a distance of 11.64 miles, and has 3.506 miles of sidings and yard tracks.

The main track is laid with 63-pound rail, connected by angle plates 24 inches in length with four bolts. The rail is very much worn and much of it should be replaced. All the connections are full bolted, but many bolts are loose and cannot well be kept tight on account of the worn condition of the rail and connections.

The cross-ties—all yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; they are in good condition, well spaced and full spiked.

The general alignment is good; the maximum curve is 5 degrees, located at Florida. The grades are generally light, the maximum being 45 feet per mile, between Florida and Orange Farm. The roadway is very well graded and properly drained; no subdrains are used.

There is but one iron bridge; it is a deck plate girder, located in Goshen yard; it has good masonry, standard ties and guard timbers, in good repair. There is one span of timber trussed stringers on timber blocking; it is located in a swamp and the entire structure settles several inches when a train goes over it. The timbers of the bridge are sound and apparently sufficient, but the foundation is bad, and the system of trussed stringers of this character is not approved; it should be replaced promptly. There are several pieces of pile and framed trestle; they are of standard construction and in proper repair. Most of the open culverts and cattle passes are constructed entirely of wood; a few of them have masonry, generally of small stone, and in poor repair. It is expected to replace most of these structures with iron pipe and filling in the near future. The stringers are mostly of timber; a few are I-beams; all are of suitable dimensions and properly maintained. The ties and guard timbers are standard and sound. There are no arch culverts. The box culverts and iron pipe drains are apparently in good condition. A few Wharton switches yet remain, but most are split point. The Wharton switches have rigid stands and the split point, automatic. Most frogs are spring rail. Derailing switches are in all sidings where their use appears necessary.

The alignment and surfacing of track are only ordinary. Much of the road is through swampy country where the roadbed settles considerably, and owing to the poor condition of rail and connections it is difficult to keep the track in first-class alignment and surface. The outer rail on curves is about correctly elevated for the rate of speed maintained. The track is lightly ballasted with gravel and cinders; portions of it have been recently reballasted, improving the condition.

No railroads, steam or electric, cross at grade.

Some small brush remains on the right of way along the swampy part of the road. The fences are of wire and board, and somewhat out of repair. The highway crossings are in proper condition and protected by signs of the diamond and "X" form. The cattle guards are of the wooden slat pattern; some are lacking and others in poor repair. Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The track sections are approximately 7½ miles in length and the force employed upon each consists of a foreman and five laborers. Each gang is furnished with flags, lanterns and torpedoes. The track is patrolled daily by some member of the section force.



No interlocking plants are maintained excepting at the junction with the main line at Goshen. The movements of trains are governed by the telegraphic train order system.

The stations, while small, are fairly maintained and furnished similarly to those on the main line and the same remarks apply.

Since the last inspection (October, 1903) approximately 20 per cent. of the cross-ties have been renewed; three miles of track have been rebalasted with cinders; necessary repairs have been made to bridge, open culvert and cattle pass floors, light repairs to station buildings, and some repairs made to fences.

#### *Recommendations.*

That the worn rail and angle plates be replaced and the track bolts be kept tight; that the trussed stringer bridge mentioned in this report be replaced with a permanent structure; that open culvert and cattle pass masonry be properly repaired or the openings to grade eliminated by putting in iron pipe and filling; that all brush on the right of way be cut and removed; that the fences be put in proper repair, and that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade.

#### *Crawford Branch.*

(Inspected September 29, 1905.)

The Crawford branch connects with the main line of the New York, Ontario and Western railway at Crawford Junction, about four miles west of Middletown, and extends to Pine Bush, a distance of 10.22 miles, and is a single track road with .797 miles of sidings. The trains which operate over this branch run on the tracks of the New York, Ontario and Western railway from Middletown to Crawford Junction (a distance of approximately 4 miles).

About two miles of the main track are laid with 74-pound, and the remainder with 63-pound steel rail. The 74-pound rails are connected by angle plates 40 inches in length with six bolts, and the 63-pound rails by angle plates 24 inches in length with four bolts.

The cross-ties—all yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track.

The general alignment is good; the maximum curve is 5 degrees, located at Pine Bush. The grades, while somewhat broken, are generally light; the maximum is about 64 feet per mile for about 1,000 feet in length west of Bullville. The roadway is fairly well graded and properly drained; no subdrains are used.

There are no bridges in the roadway. The overhead bridges are properly maintained. Many of the open culverts and cattle passes have poor masonry. I-beam and timber stringers are both used; all are of suitable dimensions and in proper condition. The ties and guard timbers are standard and well maintained. There are no arch culverts. The box culverts and iron pipe drains are in fair condition. All switches are split point; rigid and automatic stands are both used. High targets are maintained at obscure places. Nearly all frogs are spring rail. Derailing switches are in all sidings where their use appears necessary. The alignment and surfacing of track have been somewhat improved and are fair for the moderate speed of trains maintained. The track is generally very lightly ballasted with gravel and cinders. Some new ballasting has been done.

No railroads cross at grade.

The right of way is clear and clean, fenced with wire and stone wall, in fair repair. The highway crossings are properly graded and protected by signs of the diamond or "X" form, in good condition. Wooden slat cattle guards are used; some are lacking and others in poor repair. No mile posts are maintained. The whistle posts are properly located. Overhead obstructions are protected by warning signals.

The track is maintained as one section, and the force employed consists of a foreman and six laborers. An extra gang is at present maintained, rebalasting track. The section gang is furnished with flags, ladders and torpedoes. The track is patrolled daily by some member of the force.

The only interlocking plant maintained is at the junction with the New York, Ontario and Western railway at Crawford Junction. The movements of trains are governed by the telegraphic train order system.

The station buildings are small but in fair repair; they are furnished similarly to those on the main line and the same remarks apply.

Since the last inspection (October, 1903) about 20 per cent. of cross-ties have been renewed; about two miles of second use 74-pound steel rail have been laid, replacing worn 63-pound rail; two miles of track have been rebalasted with cinders; three miles of fence have been renewed.

#### *Recommendations.*

That the poor masonry to open culverts and cattle passes be repaired or renewed, and that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed at grade.

#### *New Jersey and New York Division.*

(Inspected September 27, 1905.)

The larger portion of the New Jersey and New York division is in the State of New Jersey; that portion which is within the State of New York consists of the following: New Jersey and New York railroad, from the New Jersey State line to Nanuet Junction, 2.3 miles, and from Spring Valley to Haverstraw, 11.55 miles. (The trains on this line of road operate between Nanuet Junction and Spring Valley, a distance of about three miles, over the line of the Piermont branch); the New City branch, from New City Junction, on the New Jersey and New York railroad, to New City, a distance of 4.29 miles; the Piermont branch, from Suffern, on the main line of the New York division, to Piermont, a distance of 18 miles; and the Northern railroad of New Jersey, from the New Jersey State line to Nyack, a distance of 5.82 miles, of which 1.32 miles are double track and the balance of this and the entire length of the other lines above mentioned are single track roads. The New Jersey and New York railroad and the New City branch have 1.685 miles of sidings and yard tracks; the Piermont branch, 2.213 miles of sidings and yard tracks, and Northern Railroad of New Jersey, 2.10 miles of sidings and yard tracks.

The New Jersey and New York, the New City branch and the Piermont branch have main tracks laid with 63-pound steel rail, connected by angle plates 24 inches in length with four bolts; the main track of the Northern Railroad of New Jersey is laid with 80-pound steel rail, connected by angle plates 30 inches in length with six bolts. The 63-pound rail, especially on the Piermont branch, is considerably worn, and on that road many loose bolts were observed; the 80-pound rail is in very good condition and all bolts are tight.

The cross-ties—all yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2.816 to the mile of track; they are in good condition, evenly spaced and full spiked.

The New Jersey and New York railroad is considerably crooked; the maximum curve is 9 degrees, located near Haverstraw. The general alignment of the New City branch is fair; the maximum curve is 5 degrees, near Nanuet. The general alignment of the Piermont branch is very good; the maximum curve is 5 degrees and 30 minutes, at Sparkill. The Northern Railroad of New Jersey is considerably crooked; the maximum curve is 9 degrees, near Sparkill. The maximum grade of the New Jersey and New York railroad is 85 feet per mile, east of Haverstraw; of the New City branch, 75 feet per mile, of the Piermont branch, 80 feet per mile, for a distance of about 7 miles, between Blauvelt and Monsey; of the Northern Railroad of New Jersey, 78.6 feet per mile, for about two miles, between

Sparkill and Grand View. The grades on all the lines are considerably broken. Some of the cuts on the New Jersey and New York railroad are rather narrow and have slopes upheld by retaining walls. The embankments are fair; ditches are somewhat filled and need cleaning. The New City and the Piermont branches are very well graded and properly drained. The Northern Railroad of New Jersey has some narrow cuts with slopes upheld by retaining walls; the embankments are of fair width and the roadway properly drained.

The steel and iron bridges are in good condition and masonry generally in good repair. One bridge on the Northern Railroad of New Jersey is supported on bents pending renewal of masonry. The bridge ties and guard timbers are standard and in good repair. Inside guard rails are maintained on the long bridges. A few of the bridges need repainting. There are no wooden bridges remaining in the roadway of any of the lines above mentioned. The only trestle structures are on the Piermont branch; they are of standard construction and in good repair. The open culverts and cattle passes are in good condition; nearly all have I-beam stringers and a few wooden stringers are of sufficient dimensions and in sound condition; all have standard ties and guard timbers, properly maintained. The arch and box culverts and iron pipe drains are apparently in good condition. The main track switches are split point and have stands automatic for main track, excepting where connected with interlocking or electrically locked. High switch stands are used for outlying switches and in obscure places. Main track frogs are spring rail. Derailing switches are in all sidings where their use appears necessary. The Northern Railroad of New Jersey is well ballasted with broken stone; the other roads generally lightly ballasted with gravel and cinders. The alignment and surfacing of track of the Northern Railroad of New Jersey are first-class and of the other roads fair. The outer rail on curves is about correctly elevated for the speed at which trains are operated.

The single track of the Piermont branch and the Northern Railroad of New Jersey cross at grade at Sparkill; the crossing is protected by a target signal and all trains are required to come to a full stop before crossing. The New City branch crosses the Piermont branch at Nanuet; this crossing is also protected by a target signal and all trains are required to come to a full stop.

The right of way is entirely cleared and free from trees, brush and rubbish. The fences are of wire, generally out of repair, and some entirely lacking. The highway crossings are well graded, properly planked and protected by signs of the diamond or "X" form. Practically no cattle guards are maintained.

On the New Jersey and New York railroad one highway crossing is protected by a flagman, on the Piermont branch, two by flagmen, two by flagmen and gates, and two by electric bells; on the Northern Railroad of New Jersey two are protected by flagmen, four by flagmen and gates, and two by electric bells. Mile posts are maintained on all excepting the New Jersey and New York railroad north of Spring Valley. Whistle posts are at the prescribed distance from the highway crossings on all the roads. All overhead obstructions are protected by warning signals.

On the New Jersey and New York railroad and the New City branch the track sections are approximately nine miles in length and the force employed upon each consists of a foreman and six laborers; on the Piermont branch the sections are six miles in length, and the average force consists of a foreman and four laborers; on the Northern Railroad of New Jersey they are five and one-half miles in length and the force consists of a foreman and six laborers. Each gang is furnished with flags, lanterns and torpedoes, and all portions of the track are patrolled daily by some member of the section force.

The only interlocking plant maintained is at the connection of the Piermont branch with the main line at Suffern. The movements of trains are governed by the telegraphic train order system; on the Northern Railroad of New Jersey the bell code system is used.

The stations are in very good condition excepting at Pearl River on the New Jersey and New York railroad, where a new station is contemplated;

they are similarly equipped to those on the main line and the same remarks apply.

Since the last inspection (October, 1903) approximately 20 per cent. of the cross-ties have been renewed; second use 80-pound rail is being distributed on the Piermont branch to replace worn 63-pound rail; two miles of the New Jersey and New York railroad and ten miles of the Piermont branch have been reballasted with cinders; bridge No. 14, on the Piermont branch, has been rebuilt: one culvert has been rebuilt at Sparkill on the Northern Railroad of New Jersey, a new engine house erected at Nyack, and a new water station at Sparkill; on the New Jersey and New York railroad new engine houses have been erected at Woodbine and Haverstraw, and a new engine house on the New City branch at New City; on the Piermont branch a new station has been erected at Nanuet, a set of crossing gates put in at Orange avenue, Suffern, and another at Spring Valley; necessary repairs have been made to other station buildings, and light repairs to fences.

#### *Recommendations.*

That the much worn rail on the Piermont branch be replaced and the loose track bolts tightened; that the ditches which have become clogged on the New Jersey and New York railroad be cleaned; that the steel and iron bridges be repainted to prevent injury from rust; that the fences be put in proper repair; that cattle guards with necessary guard fences be put in at each boundary of all the highways crossed at grade, and that a new station be erected at Pearl River on the New Jersey and New York railroad.

#### *Delaware Division.*

(Inspected September 29, 1905.)

The Delaware division in this State consists of the portions of the main line of the Erie railroad from Sparrow Bush to Mill Rift bridge, 0.853 miles, and from bridge 9 to Comstock's, 68.822 miles, a total of 69.675 miles, all double track; the remaining portions of the Delaware division—from Mill Rift bridge to bridge 9, and from Comstock's to Susquehanna—are in the State of Pennsylvania. There are in this State 14,599 miles of sidings and yard tracks.

91.668 miles of main track are laid with 90-pound, 9.5 miles with 80-pound, and the remainder, 38.182 miles, with 74-pound steel rail. The 90-pound rails are connected by angle plates 30 inches in length with 6 bolts, and 24 inches in length with 4 bolts; the 80-pound rails by angle plates 30 inches in length with 6 bolts, and the 74-pound rails by angle plates 40 inches in length with 6 bolts.

The cross-ties—about 80 per cent. yellow pine and 20 per cent. white oak—are 7x9 inches, 8 and 8½ feet in length, and laid at the rate of 2,640 to the mile of track.

This division of the road is very crooked, the maximum curve is 6 degrees and 9 minutes, located at Skinner switch. The maximum grade is about 67 feet per mile. The roadway is well graded and thoroughly drained; sub-drains are extensively used in wet cuts.

All bridges are steel or iron, in good condition and generally well painted. Many new ones have been recently put in, and a few others considered light for the class of motive power the company desires to use are to be replaced by stronger structures in the near future. The masonry is in good condition. Bridge ties and guard timbers are standard and in good repair. Inside guard rails are maintained on the long and high bridges and all bridges on curves. There are no wooden structures remaining in the roadway. All overhead bridges are properly maintained. The open culverts and cattle passes have good masonry, I-beam stringers, standard ties and guard timbers in good repair. The arch and box culverts and iron pipe drains are in good condition. All main track switches are split point; practically all are interlocking or electrically locked. The targets are in proper condition. Switch and semaphore lamps show red light for danger

and green for safety. Derailing switches are in all sidings where their use appears necessary. The main track frogs are spring rail. The track is well ballasted with gravel and broken stone. The alignment and surfacing of track are first-class and the outer rail on curves properly elevated.

No railroads, steam or electric, cross at grade.

The right of way is clear and clean. The fences are of wire, considerably out of repair and some lacking. The highway crossings are well graded, properly planked and protected by signs of the diamond or "X" form. The cattle guards are of the wooden slat pattern; some are lacking and many out of repair. Three highway crossings are protected by electric bells.

Mile posts are maintained, and the whistle posts are at the prescribed distance from the highway crossings. All overhead obstructions are protected by warning signals; some of them—to which attention was directed—need repairs.

The track sections average 4.52 miles in length, and the force employed upon each consists of a foreman and seven laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the track are patrolled daily. At places where danger may be anticipated from stone rolling down the hillside upon the track, in times of storm, four regular watchmen are maintained during the summer season and sixteen in the winter time, and when severe storms occur the entire section force is required to patrol the track.

Interlocking plants are maintained at Tusten, Callicoon, Long Eddy, Lordville, Hancock, east of Deposit, west of Deposit, and at Gulf Summit. The movement of trains are governed by the bell code system of blocking.

The station buildings are in very fair repair and are furnished similarly to those on the main line, New York division, and the same remarks apply.

Since the last inspection (October, 1903) about 20 per cent. of the cross-ties have been renewed; 37.28 miles of new 90-pound steel rail have been laid, replacing worn 80-pound and 74-pound rail; 4.79 miles of the track have been reballasted with gravel and 0.31 miles with broken stone; bridge No. 9, 549 feet in length, across the Delaware river, has been replaced with a new steel bridge of modern design; also bridge No. 19, 107 feet in length, and bridge No. 22, 275 feet in length; also open culvert No. 176.01, 12 feet in length, replacing a wooden structure; the masonry to bridges Nos. 9, 19, 22, and open culvert No. 176.01 has been rebuilt or extensively repaired; bridges Nos. 16½, 16¾, 9 and 13 have been repainted; about 4 miles in length of the embankment along the Delaware river have been protected by riprap wall, and 2½ miles of slope wall, and approximately 1,000 feet of paving put in at the foot of the walls to protect from high water and ice; necessary repairs have been made to station and other buildings.

#### *Recommendations.*

That the fences be put in proper repair; that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade, and that the missing throngs on overhead bridge warning signals be replaced.

#### *Susquehanna Division.*

(Inspected September 30, 1905.)

The portion of the Susquehanna division in this State comprises that part of the main line of the Erie railroad from the Pennsylvania State line, near Great Bend, to the west end of Hornellsville yard, a distance of 130.14 miles, all double track, and has 133.6 miles of sidings and yard tracks.

The roadway is properly graded and well drained, sub-drains being laid in the ditches of wet cuts. The general alignment is good and most curves light; the maximum 6 degrees and 51 minutes, located at Corning. The grades are very light and for most of the distance practically level; the maximum is 23 feet per mile, for a distance of about 500 feet, at Corning.

All bridges in the roadway are steel or iron and in good condition; a

few are considered light for the class of motive power and rolling stock the company desires to use, and are to be replaced with stronger structures as rapidly as possible; a number of them have already been replaced and the erection of others is now in progress. The masonry is very good; necessary repairs have been or are being made. The ties and guard timbers are standard and in proper repair. Inside guard rails are maintained on long and high structures. The overhead highway and farm bridges are in good repair. The open culverts and cattle passes have fair to good masonry, I-beam stringers, standard ties and guard timbers, properly maintained. The arch and box culverts and iron pipe drains are generally in good condition. One arch culvert located west of Lestershire, of about 12 feet span, was undermined by a heavy freshet about a year ago and one track is now supported on girders resting on pile foundation pending the renewal of the arch.

The cross-ties—about 75 per cent. yellow pine and 25 per cent. white oak—are 7x9 inches, 8½ feet in length, and laid at the rate of 2,616 to the mile of track; they are in good condition, fairly well spaced and full spiked.

161.59 miles of the main track are laid with 90-pound, 97.99 miles with 80-pound, and the remainder, 0.70 miles, with 74-pound steel rail. The 90-pound rails are partly connected by angle plates 30 inches in length with 6 bolts, and the remainder by angle plates 24 inches in length with 4 bolts; the 80-pound rails are connected by angle plates 30 inches in length with 6 bolts, and the 74-pound by angle plates 40 inches in length with 6 bolts. The 90-pound rail is in good condition; a portion of the 80 and the 74-pound rail is somewhat worn and is being replaced with the 90-pound rail. All the connections are full bolted and the bolts tight. The switches are split point and have stands automatic for main track, with targets well painted; many are connected with towers by interlocking. Switch and semaphore lamps show red light for danger and white for safety. The main track frogs, excepting at junctions, are spring rail. Derailing switches are in all sidings where their use appears necessary and nearly all are connected with the main track switch stand by interlocking. The alignment and surfacing of track are good and the outer rail on curves properly elevated. The tracks are fairly ballasted with gravel, a little broken stone and slag being used in places.

Two branch tracks of the Delaware, Lackawanna and Western railroad are crossed at grade at Binghamton; the easterly crossing is protected by a modern and complete interlocking plant; at the westerly crossing there is an old style wheel machine in the tower, which is now being replaced by a modern and complete interlocking equipment. One branch track of the Delaware, Lackawanna and Western railroad is crossed at grade at Owego; the crossing is protected by a modern and complete interlocking plant. Two tracks of the Pennsylvania division of the New York Central and Hudson River railroad are crossed at grade at Corning; the crossing is protected by a modern and complete interlocking plant. Two tracks of the Elmira Water, Light and Railroad Company (electric) cross at grade on Water street, Elmira, and a single track of the same railroad on Fourteenth street, Elmira; at each crossing the conductors of the electric railroad are required to pilot their cars across the track of the steam railroad.

The right of way is thoroughly clean and fenced with wire, board and stone wall; the fences are not in good repair. The highway crossings are well graded, properly planked and protected by signs of the diamond or "X" form, suitably located and well painted. Wooden slat cattle guards are used; some are lacking and others out of repair. Eleven highway crossings are protected by flagmen, 36 by flagmen and gates, and 6 by electric bells.

Mile posts are maintained and the whistle posts are at the prescribed distance from the highway crossings. All overhead obstructions are protected by warning signals.

The track sections are about five miles in length and the force employed upon each consists of a foreman and from six to ten laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the track are patrolled daily.

Twenty-five interlocking and block signal plants are maintained, located at about equal intervals. The movements of trains are governed by the manual controlled block signal bell code system, the block being positive for passenger trains and permissive for freight when conditions are favorable.

The station buildings are in fair repair; a few of them, notably at Elmira and Corning, are old buildings and the accommodation for waiting passengers apparently too small. All stations are provided with drinking water and timetables are posted in the waiting rooms. Fire protection is furnished at all stations, not only on this division but all portions of the road; at stations where it can be done connection is made with water-works and hose furnished; at others water is kept in barrels with fire pails filled with water convenient, and fire extinguishers.

Since the last inspection (October, 1903) about 16 per cent. of the cross-ties have been renewed; 31.47 miles of new 90-pound steel rail have been laid, replacing worn 90, 80 and 74-pound rail; additional rail is now distributed and being laid; 30.65 miles of main track have been rebalasted with gravel; 23 light iron bridges have been replaced with new and stronger structures and the masonry to them repaired or renewed as necessary; one box culvert has been rebuilt; the masonry to two open culverts has been rebuilt; a new station has been erected at Endicott, new pump houses at Smithboro and Addison; house built for section foremen at Erwin's; new platforms of flagging put in at Waverly and Corning; extensive repairs made to transfer shed and roof of freight house at Binghamton; freight house platform, track, scales, etc., at Elmira repaired, and station platform repaired and extended; repairs made to baggage and express building and to the freight house at Corning; station roof at Addison has been repaired; the division offices in the station at Hornellsville have been improved; repairs made to passenger station platform and station buildings at Canisteo, to the engine house and car shops at Elmira, and turntable at that place renewed; the coal trestle and pockets at Waverly have been extensively repaired; new water stations have been put in at Waverly, Corning, Smithboro, Union, Addison and Cameron; light necessary repairs have been made to other stations and platforms, etc.; many bridges, open culverts and cattle-pass floors have been renewed or repaired; 2 bridges have been repainted,  $3\frac{1}{2}$  miles of fence entirely renewed, and 12.3 miles repaired.

#### *Recommendations.*

That the fences be put in proper repair; that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade.

#### *Tioga Division.*

(Inspected September 30, 1905.)

The portion of the Tioga division in this State extends from a connection with the Northern Central railway at State Line Junction to the Pennsylvania State line near Seeley creek, a distance of 6.51 miles, single track, and has approximately .75 miles of sidings. From State Line Junction to the connection with the main line of the Susquehanna division of the Erie railroad at Southport, a distance of 2.4 miles, the trains operating on this division run over the tracks of the Northern Central railway.

The roadway is very well graded and the drainage fair.

There is but one iron bridge—a through plate girder about 70 feet in length, located near Seeley creek; it is in good condition, has standard ties and guard timbers, in proper repair; the masonry is good. There is one wooden bridge, a Howe truss of approximately 100 feet span, located at Wells; this bridge has been recently rebuilt and is in good condition throughout. There are a number of low trestles, consisting of from three to eight or ten spans each, maintained as flood bridges; the bents are of piles, the stringers, ties and guard timbers of yellow pine; most of them have recently been renewed and all are in safe condition. Most open culverts and cattle passes

are constructed entirely of wood; a few have masonry abutments and I-beam stringers; all are in good repair and sufficient for the requirements. There are no arch culverts. The stone box culverts and iron pipe drains are in good condition.

The cross-ties—mixed yellow pine and oak—are 7x9 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; their condition is good; they are fairly well spaced and full spiked.

The track is laid with 63-pound rail, in fair condition for the light traffic. The rails are connected by angle plates 24 inches in length with 4 bolts; all the connections are full bolted and bolts tight. The main track switches are split point; rigid and automatic stands are both in use; all have proper targets. Some of the rigid stands show the position of the switch simply from the position of the target and not from its color. Switch lamps are not used, night trains not being operated. All frogs are rigid. Derailing switches are in sidings where their use appears necessary, but have no targets on the stands. The alignment and surfacing of the track are fair and the outer rail on curves about correctly elevated for the speed at which trains are scheduled. The track is lightly ballasted with gravel and cinders.

No railroads, steam or electric, are crossed at grade.

The right of way is entirely cleared, free from brush and rubbish and fairly well fenced with wire and board. The highway crossings are properly graded, well planked and protected by signs of the diamond and "X" form. No cattle guards are maintained.

Mile posts are maintained and the whistle posts are properly located. Overhead obstructions are protected by warning signals.

The track sections are about six miles in length, and the force employed upon each consists of a foreman and two laborers. Flags, lanterns and torpedoes are furnished the section men, and all portions of the track are patrolled daily.

No interlocking plants are maintained. The movements of trains are governed by the telegraphic train order system.

There are but two stations in this State; they are small frame buildings, old but in fair repair, are clean and neat and properly furnished.

Since the last inspection (October, 1903) a new Howe truss bridge has been put in at Wells, replacing an old one; practically all the trestle structures have been rebuilt; light repairs have been made to ballast and some repairs to the fences.

#### *Recommendations.*

That the switch stands which show position of the switch only by the position of the target be replaced with stands showing position by the color of the target; that the stands of derailing switches be provided with targets, and that cattle guards with proper guard fences be maintained at the boundary of all the highways crossed at grade.

#### *Buffalo Division—Main Line.*

(Inspected October 1, 1905.)

The main line of the Buffalo division extends from Hornellsville to Buffalo, a distance of 92.161 miles, all double track, and has 117.273 miles of sidings and yard tracks.

The roadway is thoroughly graded and well drained; sub-drains of tiling are laid in the ditches of wet cuts.

The bridges in the roadway are all steel or iron, in good condition and generally well painted; a few—notably Nos. 7 and 8—which are on bents pending renewal, are light for the class of motive power desired to be used, and arrangements are made for replacing them with stronger structures. The masonry is good, the ties and guard timbers standard and in good repair. Inside guard rails are maintained on the long and high structures. Overhead bridges, wood and iron, are in proper repair. The open culverts and cattle passes, with the exception of two, have I-beam stringers; all have



standard ties and guard timbers, well maintained. There yet remain eight with timber abutments; all the remainder have abutments of masonry and all are in good, safe condition. The arch and box culverts and iron pipe drains are apparently in good condition.

The cross-ties—about 80 per cent. oak and the remainder yellow pine—are 7x9 inches, 8 feet 6 inches in length, and laid at the rate of 2,816 to the mile of track; they are in good, sound condition, properly spaced and full spiked.

Four miles of main track are laid with 74-pound, 158.828 miles with 80-pound, and 21.50 miles with 90-pound steel rail. The 74-pound rail is considerably worn and is now being replaced; most of the 80-pound rail is in good condition, and new 90-pound rail is being put in as rapidly as necessary, replacing any that is worn. The 90-pound rail is in first-class condition. The 74-pound rails are connected by angle plates 40 inches in length with 6 bolts; the 80-pound rails by continuous rail joints 24 inches in length with 4 bolts, and angle plates 30 inches in length with 6 bolts; the 90-pound rails by angle plates 24 inches in length with 4 bolts. All connections are full bolted and no loose bolts were discovered. The main track switches are split point and have stands automatic for main track. Many high targets are used at outlying switches and in obscure places. The targets are well painted. Switch and semaphore lamps show red light for danger and white light for safety. All main track frogs, excepting at junctions, are spring rail. Derailing switches are in all sidings connecting with the main track, upon which cars are left standing, where the grade descends toward the main track; some of the stands, however, lack targets. The general alignment is good; the maximum curve is seven degrees, east of Castile; the maximum grade is 48.6 feet per mile, for about one mile between Attica and Linden. The alignment and surfacing of track are first-class and the outer rail on curves correctly elevated for the speed at which the trains run. The track is ballasted with gravel in fair to good quantity.

The following named railroads are crossed at grade: One track leading to the stock yards at East Buffalo; the crossing is protected by semaphore signals; main line trains do not stop if signals are in their favor; the crossing is on a long tangent and the view unobstructed. One track of the Western New York and Pennsylvania railway, one track of the Buffalo Creek railroad, and another track of the Western New York and Pennsylvania railway, at East Buffalo; these crossings are located from 150 to 200 feet apart and the movements of trains over all of them are governed by signals located in a tower situated about midway between the crossings; all trains come to a full stop before crossing. This is a dangerous crossing, owing to the large number of trains on all the roads using it; 400 trains or more per day cross. This place should have better protection. While an interlocking plant might interfere somewhat with the operation, as there are numerous sidings and yard tracks in its immediate vicinity, the fact that trains could run at greater speed when signals were in their favor would partly recompense for this, and in the opinion of your inspector an interlocking plant should be put in. Your honorable Board has already had this matter under consideration, but as yet no work has been done toward bettering the conditions of that place. The tracks of the Lake Shore and Michigan Southern railway, connecting with the New York Central and Hudson River railroad, are crossed at Buffalo; the crossing is protected by a tilting board signal and all trains are required to come to a full stop before crossing. Four main tracks of the New York Central and Hudson River railroad near the Buffalo station; this crossing is thoroughly protected by an interlocking plant. One track of the International railway (electric) crosses at grade at Lancaster, and another track of the same railway on Union road, west of Cheektowaga; there are derailing switches in the track of the electric railway and the conductors are required to pilot their cars across the track of the steam railroad.

The right of way is free from trees, brush and rubbish, and is fenced with wire, in fair repair. The highway crossings are well graded, properly planked, and protected by signs of the diamond or "X" form, suitably located and well painted. Wooden slat cattle guards are used; at a few crossings they

are lacking and at others some repairs are needed. Fifteen highway crossings are protected by flagmen, three by flagmen and gates, and eight by electric bells. Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The track sections are approximately five miles in length and the force maintained upon each consists of a foreman and eight laborers. Each gang is furnished flags, lanterns and torpedoes. All portions of the track are patrolled daily by some member of the section force.

Interlocking plants are maintained at the junction with the Susquehanna division at Hornellsville, at Canaseraga, Portage, East Buffalo, Seneca street and Chicago street, Buffalo. The movements of trains are governed by the manual bell code signal system.

The station buildings are in good repair and properly furnished, and the same remarks apply as to the main line of the New York division.

The principal repairs and improvements noted as made since last inspection (October, 1903) are as follows: About 15 per cent. of the cross-ties have been renewed; 30.3 miles of new 80-pound rail have been laid, replacing worn 74-pound rail, and 29 miles of 90-pound rail, replacing worn 80-pound rail; 30 miles of track have been rebalasted with gravel; bridges Nos. 9, 16 and 17 have been replaced with stronger structures, and No. 16 (Portage bridge) has had the light pin connected trusses replaced with heavy deck plate girders and heavier pin connected trusses and the towers strengthened—practically equivalent to renewing the bridge and making it a modern structure suitable for the loads designed to be taken over it; four open culverts have been replaced with iron pipe and filling; eight arch and box culverts have had masonry extensively repaired, also two open culverts; new interlocking towers have been built at Canaseraga and Portage, and a new sandhouse at Buffalo; extensive repairs have been made to the roundhouse, grain elevator, coal transfer, up-lake freighthouse, coal dock, machine shops, car shops, Minnesota ore docks and coal pockets at Buffalo, to Hunt's station and the Warsaw freighthouse; the stations at Rock Glen, Hunt's, Garwood's, Burns, the Buffalo passenger station and Buffalo grain elevator have been repainted; two iron bridges have been repainted; 1.45 miles of fence replaced and 36 miles repaired; passing tracks have been lengthened and new tracks added at Buffalo, Darien, Attica, Portage, Hunt's, Burns, Depew, "D E" tower, Linden, Silver Springs, Canaseraga and Warsaw; a new coal storage plant with capacity of 150,000 tons has been erected at Buffalo, a new coal and ash handling plant of new and excellent pattern installed at East Buffalo; 25 stalls of the Buffalo roundhouse are now being extended a distance of 30 feet in order to accommodate new engines; a new steam heating system has been installed in this engine-house, and a new coal storage plant of 25,000 tons capacity, of belt conveyor system, is now in process of construction and a new yard being built to operate the same in Buffalo.

#### *Recommendations.*

That the stands of derailing switches be equipped with targets; that the two crossings of the Western New York and Pennsylvania railway and the single crossing of the Buffalo Creek railroad at East Buffalo be protected by an interlocking plant, and that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed at grade.

#### *Niagara Falls branch, Erie International branch and Erie and Black Rock branch.*

(Inspected October 1 and 2, 1905.)

The Niagara Falls branch connects with the main line of the Buffalo division at East Buffalo, and extends to Suspension bridge, a distance of 24.10 miles, and has 23.245 miles of sidings and yard tracks; 6.31 miles, from the junction with the main line of the Buffalo division at East Buffalo, to the connection with the Erie International branch, has second

main track,—the balance of the road is single track. The Erie International branch connects with the Niagara Falls branch at International Junction, and extends to Black Rock, a distance of 4.50 miles, all double track; this branch is used principally as a switching track, practically the only passenger trains operating over it being those of the Wabash railroad. The Erie and Black Rock branch is a single track road, connecting with the International branch at Black Rock Junction, and extending to Black Rock, a distance of 1.42 miles; this branch is used only as a switching track; it is laid with 63 and 74-pound rail and is in fair condition for the purpose for which it is used, and is not considered further in this report. There are connected with the Erie International and Black Rock branches, 8.974 miles of sidings and yard tracks.

The cuts and embankments of all the roads are of full width and proper slopes. The roadway is very well drained.

The steel and iron bridges are in good condition and generally well painted. Most masonry is good. On the Niagara Falls branch at Tonawanda, the bridge rests on abutments composed of piles and timber which are sound and sufficient, although not permanent. Inside guard rails are maintained on the long structures. On the Niagara Falls branch there are several pile and timber trestles, of standard construction and in proper repair. The open culverts have I-beam stringers and standard floors, properly maintained. The masonry is in fair condition. The arch and stone box culverts and iron pipe drains are in proper condition.

The cross-ties—about 80 per cent. oak and 20 per cent. yellow pine—are 7x9 inches, 8½ feet in length, and laid at the rate of 2,816 to the mile of track; they are in sound condition, full spiked and fairly well spaced.

The Niagara Falls branch has .75 miles laid with 63-pound, one mile with 74-pound, and the remainder, 28.57 miles, with 80-pound steel rail. The Erie International branch is laid with 74-pound rail. The 63-pound rails are connected by angle plates 24 inches in length with four bolts, the 74-pound rail partly by angle plates 40 in length with six bolts, and partly by angle plates 24 inches in length with four bolts; the 80-pound rails are connected by angle plates 30 inches in length with six bolts. The rail is in very fair condition excepting the 63-pound, which is to be replaced. All angle plates are full bolted and no loose bolts were observed. All main track switches are split point; rigid and automatic stands are both in use; all have proper targets, well painted. High targets are used on the Niagara Falls branch at outlying switches and in obscure places. Switch and semaphore lamps show red light for danger and white for safety. Spring rail frogs are used entirely on the Niagara Falls branch; there are some rigid frogs on the Erie International branch. Derailing switches are in all sidings where their use appear necessary; some, however, lack targets. The maximum curve on the Niagara Falls branch is 8 degrees, west of Falls Junction; on the International branch, 12 degrees, at Tonawanda street. The maximum grade of the Niagara Falls branch is 47.5 feet per mile, and the International branch, 34.3 feet per mile. The alignment and surfacing of track are very good and the outer rail on curves correctly elevated for the speed at which trains are scheduled.

The following railroads are crossed at grade: One track of the Canandaigua branch and also a switching track of the New York Central and Hudson River railroad near Tonawanda; the crossings are protected by an interlocking plant. Two tracks of the Lockport branch of the New York Central and Hudson River railroad at North Tonawanda; the crossing is protected by an interlocking plant. One switching track of the New York Central and Hudson River railroad crosses north of North Tonawanda; the crossing is protected by a tilting board signal and trains are required to come to a full stop. Two tracks of the Niagara Falls branch and one track of the Lewiston branch of the New York Central and Hudson River railroad, and a branch track connecting the Michigan Central and the Kome, Watertown and Ogdensburg yard at Suspension bridge; the crossings are protected by an interlocking plant. The Erie International branch crosses the tracks of the Niagara Falls branch and also two tracks connect-

ing that line with the Belt line of the New York Central and Hudson River railroad at North Buffalo; the crossings are protected by an interlocking plant. Tracks of the International railway (electric) cross the Niagara Falls branch as follows: Two tracks on William street, two on Walden street, two on Genesee street, two on East Ferry street, two on Kensington avenue, two on Main street, Buffalo, one on Goundry street, North Tonawanda, one on Sugar street at Echota, one on Pine avenue and one on Ontario avenue, Suspension bridge. Two tracks of the same electric railway cross the Erie International branch on Military road, North Buffalo; this crossing is protected by an interlocking plant, and at all the other crossings the conductors of the electric railway are required to pilot their cars across the tracks of the steam railroad.

The right of way is clear and clean. Fences are not maintained excepting opposite grazing land, of which there is very little. The highway crossings are in proper condition and protected by signs of the diamond and "X" form. Cattle guards are not maintained, and apparently not needed. Seventeen highway crossings of the Niagara Falls branch and four of the International are protected by flagmen, four of the Niagara Falls branch by flagmen and gates, and six by electric bells. Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The track sections are about six miles in length, and the force employed upon each consists of a foreman and six laborers. Each gang is furnished with flags, lanterns and torpedoes, and all portions of the track are patrolled daily.

Interlocking plants are maintained at the International Junction and at the railroad grade crossings above mentioned. The movements of trains are governed by the manual system of blocking.

The station buildings are in good condition and properly equipped.

Since the last inspection (October, 1903) the following principal repairs were noted as being made: About 15 per cent. of the cross-ties have been renewed; the Erie International branch and a portion of the Black Rock branch have had 63-pound rail replaced with second use 74-pound rail; light repairs have been made to the ballast; the roundhouse, freight house, engine house and station building at Suspension bridge have been repaired; the bridge over the West Shore railroad, on the Niagara Falls branch, and the Virgil avenue bridge, on the International branch, have been repainted; new abutments, replacing timber ones, have been constructed at the Hertel avenue bridge, on the International branch; 8 miles of fence have been repaired; passing sidings have been built or lengthened at International Junction, Tonawanda, and Niagara Falls; a new storage yard for cars has been put in at Suspension bridge and at Black Rock; a new retail coal trestle with a capacity of 1,500 tons has been installed at North Tonawanda; light repairs have been made to other station buildings, also repairs to bridge, trestle and culvert floors.

#### *Recommendation.*

That the stands of derailing switches be supplied with targets.

#### *Buffalo and Southwestern Branch.*

(Inspected October 2, 1905.)

The Buffalo and Southwestern branch is a single track road, connecting with the Meadville division at Jamestown, and extending to a connection with the Buffalo Creek railroad at South Buffalo, a distance of 6.36 miles. From the point at which it connects with the Buffalo Creek railroad to the connection of the Buffalo Creek railroad with the main line of the Buffalo division at East Buffalo, the trains operating on this branch run over the tracks of the Buffalo Creek railroad, the distance being about one mile; 10.6 miles of this branch, from Jamestown to Waterboro, are operated jointly with that portion of the Meadville division and used as a westbound

track, the track of the Meadville division for the same distance being used as an eastbound track. This portion of the road is cared for and operated under the management of the Meadville division.

The cuts and embankments are of full width and proper slopes and the roadway is fairly well drained; some subdrains are used in wet cuts.

The steel and iron bridges are in good condition and fairly well painted; all have standard ties and guard timbers, in good repair. Inside guard rails are maintained only on the long and high structures. A few of the bridges are erected on pile abutments. The masonry to those having masonry is in good condition, and the pile abutments are sound and sufficient, though not permanent. There is a large number of small and low trestles, generally on pile bents. The stringers, ties and guard timbers are of yellow pine; all are of standard construction and in good repair. Most of the open culverts and cattle passes are constructed entirely of timber; the balance have fair masonry. Some I-beam stringers are used, but the majority are of yellow pine. The ties and guard timbers are standard, and the entire structures in good repair. The arch and box culverts and iron pipe drains are in good condition.

The cross-ties—about 80 per cent. oak and the balance yellow pine—are 6x8 and 7x9 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; they are in sound condition, properly spaced and full spiked. 60.65 miles of the track are laid with 74-pound, and the remainder, 6.92 miles, with 90-pound steel rail, the 90-pound rail being laid on the steep grade between Gowanda and Dayton. The 74-pound rails are connected by angle plates 40 and 24 inches in length, the 40-inch having six bolts and the 24-inch four bolts; the 90-pound rails are connected by angle plates 30 inches in length with six bolts. The rail is generally in fair condition, and the 74-pound is being replaced as rapidly as it becomes much worn. All main track switches are split point; rigid and automatic stands are both used; all have proper targets. Many high stands are used at outlying switches and in obscure places. Switch and semaphore lamps show red light for danger and white for safety. All main track frogs are spring rail. Derailing switches are in all sidings where their use appears necessary, and have proper targets. The general alignment is very good; the maximum curve is 8 degrees, located east of Dayton; the maximum grade is 132 feet per mile, for about 4.3 miles between Gowanda and Dayton. The alignment and surfacing of track are first-class and the outer rail on curves correctly elevated. The track is ballasted with slag, gravel and cinders, in fair to good quantity; much new ballasting has been done and additional ballast is now being put in.

The following named railroads cross at grade: One track of the Dunkirk, Allegheny Valley and Pittsburgh railroad at Falconer; the crossing is protected by an interlocking plant. One track of the Western New York and Pennsylvania and one track of the New York, Chicago and St. Louis, side by side, at Blasdell; the crossings are protected by a tilting board signal and all trains are required to come to a full stop before crossing.

The right of way is entirely clear and free from brush and rubbish; it is fenced with wire, in fair repair. The highway crossings are in proper condition and protected by signs of the diamond and "X" form. Wooden slat cattle guards with proper guard fences are in place at each boundary of all the highways crossed. No highway crossings are protected by flagmen, gates or electric bells. Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The track sections are about six miles in length and the force maintained upon each consists of a foreman and six laborers. Each section gang is furnished flags, lanterns and torpedoes. All portions of the road are patrolled daily by some member of the section force.

No interlocking plants are maintained excepting at the double track junction with the Meadville division at Waterboro, and at the crossing of the Dunkirk, Allegheny Valley and Pittsburgh railroad at Falconer Junction. The manual system of blocking trains is used on this branch.

The station buildings are in good repair and properly furnished.

The principal repairs and improvements noted as made since the last inspection (October, 1903) are as follows: About 15 per cent. of the cross-ties have been renewed; 10 miles of track have been rebalasted with slag and cinders; the masonry to bridges Nos. 17 and 44 has been rebuilt or repaired; the station buildings at South Dayton and Hamburg have been repaired and the platform at Markham's renewed; light repairs have been made to other station buildings; bridges Nos. 4, 5, 6, 7, 8, 9 and 54 have been repainted; about 10 miles of the fencing has been repaired or replaced; passing sidings have been lengthened and additional tracks built at Blasdell, North Collins, Eden Center and Conewango.

No recommendations appear necessary.

*Rochester Division—Main Line.*

(Inspected October 3 and 4, 1905.)

The main line of the Rochester division connects with the Susquehanna division at Painted Post, and extends to Rochester, a distance of 92.78 miles, single track, and has 24.048 miles of sidings and yard tracks.

The cuts and embankments are of full width and proper slopes and the roadway is very well drained, subdrains being used in the ditches of wet cuts.

The general alignment is fair and most curves light; the maximum is 5 degrees and 7 minutes, located at Cohocton; the grades, while somewhat broken, are generally light; the maximum is 46 feet per mile, for a distance of about 5 miles in the vicinity of Livonia.

The steel and iron bridges are in very fair condition and very well painted; a few are light for the class of motive power and rolling stock the company desires to use and are being gradually replaced with stronger structures; No. 11½, near Avoca, No. 28, west of Ruch, and No. 30, at Rochester, are especially light and their renewal should not be delayed; No. 11½ is now on bents. All bridges have standard floors, in proper repair, and inside guard rails are maintained on the long and high structures. The masonry to the bridges which have masonry is in very good condition. A few of the bridges are erected on pile abutments, which are properly constructed and the timber in them is sound. There are a number of short and low trestle structures; some of them have pile bents and the balance framed bents on pile foundations; all are properly constructed and in good repair. Many of the open culverts and cattle passes are constructed entirely of timber; some of them have masonry abutments, to a few of which repairs are needed. Some I-beam stringers are used, and the timber stringers are sound and sufficient. All have standard ties and guard timbers, properly maintained. The arch and box culverts and iron pipe drains are in proper condition.

The cross-ties—about 50 per cent. white oak, 40 per cent. yellow pine, 8 per cent. chestnut and 2 per cent. tamarack—are 6x8 and 7x9 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; they are in good, sound condition, fairly well spaced and full spiked.

Sixty-five and three one-hundredths miles of the main track are laid with 74-pound, 2 miles with 68-pound, and the remainder, 25.75 miles, with 63-pound steel rail. The 74 and the 68-pound rails are in very fair condition; the 63-pound rails are somewhat worn and are gradually being replaced with heavier rail. The 74-pound rails are connected by angle plates 40 inches in length with six bolts, the 68 and the 63-pound rails by angle plates 24 inches in length with four bolts. All the connections are full bolted and no loose bolts were observed. All switches are split point. Rigid and automatic stands are both in use; all have proper targets; many high targets are used at outlying switches and in obscure places. Switch lamps show red light for danger and white for safety, on the main line and also on branches of this division. Nearly all main track frogs are spring rail. Derailing switches are in all sidings where their use appears necessary some of the stands, however, lack targets. The alignment and surfacing of track are good and the outer rail on curves

properly elevated for the speed at which the trains are scheduled. The track is fairly well ballasted with gravel; some new ballast has recently been put in.

Two tracks of the Delaware, Lackawanna and Western railroad are crossed at grade at Erwin's; the crossing is protected by a modern and complete interlocking plant. One track of the Canandaigua division of the New York Central and Hudson River railroad is crossed at Rush; the crossing is protected by a tilting board signal and all trains are required to come to a full stop. Two tracks of the West Shore line of the New York Central and Hudson River railroad are crossed at Red Creek; the crossing is protected by gates and all trains are required to come to a full stop. One track of the Corning and Painted Post Street railway (electric) crosses at grade on Hamilton avenue, Painted Post; the conductors of the electric railway are required to pilot their cars across the track of the steam railroad.

The right of way is entirely cleared and free from brush and rubbish. The fences are of wire and in fair repair. The highway crossings are properly graded, well planked and protected by signs of the diamond and "X" form. Wooden slat cattle guards are properly maintained. Three highway crossings are protected by flagmen, one by flagman and gates, and three by electric bells. Mile and whistle posts are properly maintained.

The average length of the track sections is six miles and the force employed upon each consists of a foreman and five laborers. Each gang is provided with flags, lanterns and torpedoes. All portions of the track are patrolled daily by some member of the section force. All overhead obstructions are protected by warning signals.

The only interlocking plants maintained are at the junction with the Susquehanna division at Painted Post and the grade crossing of the Delaware, Lackawanna and Western railroad at Erwin's. The movements of trains are governed by the telegraphic train order system.

The station buildings are in fair repair, properly furnished, and the same remarks apply as to the station buildings of the New York division.

The principal repairs and improvements noted as made since the last inspection (October, 1903) are as follows: Approximately 15 per cent. of all cross-ties have been renewed; necessary repairs and renewals have been made to the ties and guard timbers on bridge, trestle, open culvert and cattle pass structures; 2.91 miles of second use 74-pound rail have been laid in main track, replacing worn 63-pound rail; 7 miles of the road have been reballasted with gravel and one mile with cinders; one iron pipe culvert has been put in, replacing an open culvert; some repairs have been made to the masonry of bridges, culverts and cattle passes, and a large number of the abutments and piers have been repointed; open culvert No. 1, located at Painted Post, is now being rebuilt; a new station building, replacing one that was burned, has been erected at Atlanta; a building and lot have been purchased at Webster, and the building has been extensively repaired and painted, for use as a station; the roof of the station at Avon has been repainted, also station buildings at Avoca, Wells, Conesus, Rush and West Henrietta; a new roof has been put on the station at Curtis and on the baggage room at Avon; repairs have been made to engine house at Rochester and the roof repainted; 9 iron bridges have also been repainted; 6.43 miles of fence have been entirely rebuilt and 50.35 miles extensively repaired; the track has been raised for better flood protection at bridges Nos. 1 and 18; the track has been raised 14 inches at Atlanta where a new station was constructed, and the station grounds graded and new cement platform built; a new "Y" has been constructed at Wayland for turning pusher locomotives; the coal trestle at Avon has been extensively repaired and fill made for a new "Y" track connecting main line with the Attica branch; extensive repairs have been made to a coal trestle in Rochester and a new retaining wall constructed along the Genesee river, and the main tracks elevated for better flood protection; the platform at the east end of the Rochester train shed has been extended about 75 feet, and about 150 feet of new cement sidewalk constructed approaching the station at Wayland.

*Recommendations.*

That repairs and renewals to open culvert and cattle pass masonry, as shown by your inspector to the officers in charge of the maintenance of this division, be made, and that the stands of derailing switches be equipped with targets.

*Conesus Lake Branch.*

(Inspected October 4, 1905.)

The Conesus Lake branch connected with the main line of the Rochester division at Conesus Lake Junction, and extends to Lakeville, on Conesus Lake, a distance of 1.61 miles, single track, and has .376 miles of sidings and yard tracks. This branch is used mainly for excursion travel during the summer season.

It is laid with 63-pound rail, in fair condition.

There are no bridges.

The cross-ties are in good condition.

The roadway is very well graded, properly drained, and the branch in fair condition for the purpose for which it is used.

*Attica Branch.*

(Inspected October 3, 1905.)

The Attica branch connects with the main line of the Rochester division at Avon, and extends to Attica, on the line of the Buffalo division, a distance of 34.55 miles, single track, and has 7,966 miles of sidings and yard tracks.

The road is somewhat crooked, but most curves light; the maximum is 5 degrees and 4 minutes, located at Batavia. The grades are also broken but not steep; the maximum is 47.36 feet per mile. The roadway is very well graded and the drainage system good.

The steel and iron bridges are in fair condition and generally well painted; a few are light for the class of motive power and rolling stock the company desires to use; the one over the New York Central and Hudson River railroad east of Batavia is especially light, and should be promptly replaced. (Your inspector is advised that a new bridge is ordered for this place and will be erected in the near future. Arrangements are also made for replacing others, where necessary.) A few of the bridges are erected on pile or timber abutments, all of which are sound and sufficient. The masonry to these having masonry is in very fair condition. All bridges have standard ties and guard timbers, in good repair. Inside guard rails are maintained on the long structures. There yet remain in the roadway many pile and framed bent trestles, nearly all of which are short and low structures, are of standard construction and generally in good repair; No. 7, however, between Alexandria and Batavia, has some bad caps and other timber considerably decayed, and needs very thorough repairs. Many of the open culverts and cattle passes are constructed entirely of timber; the masonry to those having masonry is generally in fair condition. Some I-beam stringers are used, but most have timber stringers; all are sound and sufficient. The ties and guard timbers are standard and well maintained. Arch and box culverts and iron pipe drains are apparently in good condition.

The cross-ties are of the same kind and dimensions as used upon the main line, are in sound condition, properly spaced and full spiked.

Ten and thirty-six one-hundredths miles of the track are laid with 74-pound and the remainder, 24.19 miles, with 63-pound steel rail. The 74-pound rails are connected by angle plates 40 inches in length with six bolts, and the 63-pound by angle plates 24 inches in length with four bolts. The 74-pound rail is in very fair condition; the 63-pound is considerably worn and much of it needs repairing. Some loose bolts were noted in the con-



nections of the 63-pound rails. The main track switches are split point; rigid and automatic stands are both in use, and all have proper targets. Most frogs are spring rail. Derailing switches are in all sidings where their use appears necessary; the stands to some of them, however, lack targets. The track is in fair surface and alignment and the outer rail on curves about correctly elevated for the speed at which the trains are scheduled. The track is lightly ballasted with gravel and cinders.

The following named railroads are crossed at grade: One track of the Genesee and Wyoming railroad near Caledonia; the crossing is protected by semaphore signals, interlocked and operated from a tower; trains are required to come to a full stop before crossing. One track of the Buffalo, Rochester and Pittsburgh railway east of Le Roy; the crossing is protected by a tilting board signal and all trains are required to come to a full stop. One track of the Canandaigua branch of the New York Central and Hudson River railroad west of Le Roy; the crossing is protected by a tilting board signal and all trains are required to come to a full stop. The main line of the New York Central and Hudson River railroad—four main tracks and a siding—at Batavia; the crossing is protected by an interlocking plant; there are no derails in the track of either railroad; all trains of the Erie railroad come to a full stop before crossing. Your inspector has observed that some trains of the New York Central and Hudson River railroad reduce speed but do not stop if the signals are in their favor. This is an obscure crossing and better protection should be afforded, or all trains of both roads come to a full stop before crossing. Two freight sidings of the New York Central and Hudson River railroad are crossed at Batavia; when switching trains of the New York Central and Hudson River railroad operate on these tracks across the line of the Erie railroad, they protect by flagging; the Erie trains do not stop at these crossings; the crossings are near together and should be protected by an interlocking plant, or all trains come to a full stop. The Attica branch of the New York Central and Hudson River railroad is crossed west of Batavia; the crossing is protected by a tilting board signal and all trains are required to come to a full stop.

The right of way is entirely cleared and free from brush and rubbish. The fences are of wire, board and stone wall, and in places out of repair. The highway crossings are properly graded, well planked and protected by signs of the diamond or "X" form. Cattle guards are of the wooden slat pattern; some of them are in need of repairs. Four highway crossings are protected by flagmen and one by flagman and gates.

Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The average length of track sections is 7 miles, and the force employed upon each consists of a foreman and five laborers. Each gang is furnished with flags, lanterns and torpedoes, and all portions of the road are patrolled daily by some member of the section force.

The only interlocking plants maintained are at the crossing of the Genesee and Wyoming railroad near Caledonia and the crossing of the New York Central and Hudson River railroad at Batavia. The movements of trains are governed by the telegraphic train order system.

The station buildings, while generally small, are in fair repair and are properly furnished.

The principal repairs and improvements noted as made since the last inspection (October, 1903) are as follows: About 15 per cent. of the cross-ties have been renewed; 10.36 miles of second use 74-pound rail have been laid, replacing worn 63-pound rail; 9 miles of track have been reballasted with gravel and 1 mile with cinders; some repairs have been made to masonry and extensive repointing has been done; the station building at Alexandria has had roof repaired and has been repainted; a new roof has also been put on the freight house at Batavia; 3 iron bridges have been repainted; 130 feet of new cement walk approaching station has been constructed at Caledonia and 50 feet at Le Roy; the yard at Batavia is being extensively improved and some additions made; 2.40 miles of fence have been entirely rebuilt, and 18.75 miles extensively repaired.

*Recommendations.*

That the bridge over the New York Central and Hudson River railroad east of Batavia be replaced as promptly as possible; that necessary repairs be promptly made to trestle No. 7; that the worn 63-pound rail be replaced and the loose track bolts made tight; that the stands of all derailing switches be equipped with targets; that the grade crossing of the New York Central and of the two side tracks of the New York Central and Hudson River railroad east of Batavia station be protected by a modern and complete interlocking plant with derailing switches in all tracks approaching the crossings, or that all trains of both roads come to a full stop before crossing; and that necessary repairs be made to fences and cattle guards.

*Mount Morris Branch.*

(Inspected October 3, 1905.)

The Mount Morris branch connects with the main line of the Rochester division at Avon, and extends to Mount Morris, a distance of 17.7 miles, and is a single track line.

The general alignment is fair, the only very sharp curve being one of 14 degrees and 30 minutes, located in the yard at Mount Morris. The grades are fairly light, the maximum being 33 feet per mile, for a distance of a little over a mile, near South Avon. The cuts and embankments are of proper width and slopes, and the roadway is fairly well drained.

The steel and iron bridges are in very good condition, have proper masonry and standard ties and guard timbers, in good repair. Inside guard rails are maintained. The trestles are of standard construction; No. 1, located near Mount Morris, is getting old and will need renewal before very long. Most open culverts and cattle passes are constructed entirely of timber; a few have masonry abutments. The timber stringers are sound and sufficient; all have standard ties and guard timbers, in proper repair; a few have stringers supported on bents on account of the poor condition of the masonry. The arch and box culverts and iron pipe drains are in fair condition.

The cross-ties—about 58 per cent. white oak, 40 per cent. yellow pine and 2 per cent. tamarack—are 6x8 and 7x9 inches, 8 feet in length, and laid at the rate of 2.816 to the mile of track; they are in good condition, properly spaced and full spiked.

The entire track is laid with 63-pound steel rail, connected by angle plates 24 inches in length with four bolts. The rail is considerably worn and some loose bolts were observed. All switches are split point. Rigid and automatic stands are both in use; all have proper targets, well painted. High targets are used at outlying switches and in obscure places. Nearly all frogs are spring rail. Derailing switches are in all sidings where their use appears necessary. The alignment and surfacing of track are fair and the outer rail on curves correctly elevated for the scheduled speed of the trains. The tracks are lightly ballasted with gravel and cinders.

Two main tracks of the Delaware, Lackawanna and Western railroad are crossed at grade near Mount Morris; the crossing is protected by a modern and complete interlocking plant.

The right of way is free from trees, brush and rubbish. Fences are of wire, in fair repair. The highway crossings are in good condition and protected by signs of the diamond or "X" form. Cattle guards are of the wooden slat pattern; some are out of repair. One highway crossing is protected by a flagman.

Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals.

The average length of track sections is about 8 miles, and the force employed upon each consists of a foreman and five laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the road are patrolled daily by some member of the section force.

The only interlocking plant maintained is at the crossing of the Delaware, Lackawanna and Western road, near Mount Morris. The movements of trains are governed by the telegraphic train order system.

The station buildings are in fair repair and properly furnished.

The principal repairs and improvements noted as made since the last inspection (October, 1903) are as follows: About 15 per cent. of the cross-ties have been renewed; 3 miles of track have been rebalasted with cinders; some repairs have been made to masonry and extensive repointing done; 3 iron bridges have been repainted; 1.23 miles of fence have been rebuilt and 9.6 miles extensively repaired.

#### *Recommendations.*

That necessary repairs and renewals be made to the masonry of open culverts and cattle passes, where the stringers are now supported on bents; that the much worn rail be replaced and loose track bolts tightened, and the necessary repairs be made to cattle guards.

#### *Allegheny Division.*

(Inspected October 4 and 5, 1905.)

The Allegheny division extends from the west end of Hornellsville yard to Dunkirk, a distance of 128.02 miles, and has 14.15 miles of second main track, the second main track extending from Hornellsville yard to near Almond, and from east of Carrollton to Salamanca; there are on the division 55.44 miles of sidings and yard tracks.

The road is considerably crooked, but most curves are light; the maximum curve east of Salamanca is 4 degrees, located near Cuba; west of Salamanca, 6 degrees, near Cattaraugus. The grades are long, moderately steep, and in places considerably broken; the maximum is about 52 feet per mile, extending from Hornellsville to Tip Top, a distance of about 13 miles. The roadway is properly graded and well drained excepting in a few cuts near Dunkirk, where ditches have become somewhat filled and need cleaning; some tile drains are laid in the ditches of wet cuts.

The steel and iron bridges are in very good condition excepting that a few of them should be repainted. The masonry is good, ties and guard timbers standard and in proper repair. Inside guard rails are maintained on the long and high bridges. There are no wooden bridges or trestles remaining in the roadway. The overhead bridges, wood and iron, are in proper condition. The open culverts and cattle passes, with the exception of four, have masonry abutments; the four referred to have the abutments of timber, which are, however, sound and sufficient; all have I-beam stringers, standard ties and guard timbers, in proper repair. The arch and box culverts and iron pipe drains are apparently in good condition.

The cross-ties—about 70 per cent. yellow pine, 27 per cent. oak, and 3 per cent. chestnut—are 7x9 inches, 8 feet 6 inches in length of the track east of Salamanca, and mostly 6x8, 8 feet in length in the track west of Salamanca; their general condition is good and they are fairly well spaced and full spiked.

Eighty and sixty-four one-hundredths miles of main track are laid with 90, 20.00 with 80, 18.56 with 74, and the balance, 22.88 miles, with 63-pound steel rail. The 90-pound and also the 63-pound rail are connected by angle plates 24 inches in length with four bolts, the 80-pound rails by angle plates 30 inches in length with six bolts, and the 74-pound rails by angle plates 40 inches in length with six bolts. The 90-pound rail is in first-class condition, most 80-pound rail good, the 74-pound rail fair, the 63-pound rail somewhat worn. All angle plates are full bolted and bolts tight. Main track switches are split point; rigid and automatic stands are both in use; east of Salamanca many are connected with interlocking plants. All switch stands have well painted targets and high targets are used at outlying switches and in obscure places. Switch and semaphore lamps show red light for danger and white for safety. Nearly all main track frogs are spring

rail. Derailing switches are in all sidings connecting with the main track where their use appears necessary; many of them are interlocked with the main track switch stand, and those that are not have proper targets. The track east of Salamanca is well ballasted with gravel and cinders, west of Salamanca, with gravel and cinders, generally in fair quantity.

One track of the Hornellsville and Canisteo railway (electric) crosses at grade on Canisteo street, Hornellsville; the conductors of the electric railway are required to pilot their cars across the track of the steam railroad. Two tracks of the Western New York and Pennsylvania railway cross at grade at Olean; the crossing is protected by a modern and complete interlocking plant. One track of the Olean street railway (electric) crosses at grade west of Olean; the crossing is protected by derails and the conductors of the electric railway are required to pilot their cars across the track of the steam railroad. One track of the Western New York and Pennsylvania railway and one track of the New York, Chicago and St. Louis railroad are crossed, side by side, at Dunkirk; the crossing is protected by a tilting board signal and all trains are required to come to a full stop before crossing. One switching track of the Dunkirk, Allegheny Valley and Pittsburg railroad crosses at grade in Dunkirk yard; at this crossing the only protection afforded is by flagging whenever trains on the switching track are crossing.

The right of way is entirely cleared and free from trees, brush and rubbish. The fences are of wire, and in places considerably out of repair. The highway crossings are in proper condition and protected by signs of the diamond or "X" form. Cattle guards are of the wooden slat pattern; many are lacking and others out of repair. Five highway crossings are protected by flagmen, and 7 by flagmen and gates.

Mile and whistle posts are properly maintained. All overhead obstructions are protected by warning signals, in proper repair.

The average length of the track sections between Hornellsville and Salamanca is five miles, between Salamanca and Dunkirk, six and one-half miles; the average force maintained on each section is one foreman and six laborers. Each gang is furnished with flags, lanterns and torpedoes and all portions of the track are patrolled daily by some member of the section force.

Interlocking plants are maintained at Almond, Tip Top, Wellsville, Cuba, Hinsdale, Olean, the crossing of the W. N. Y. & P. railway at Olean, east of Carrollton and at Carrollton. The movements of trains are governed by the manual system of bell code blocking between Hornellsville and Salamanca, and west of Salamanca by the telegraphic train order system.

The station buildings, while some of them are considerably old, are generally in fair repair; they are furnished similarly to those on the main line of the New York division, and the same remarks apply.

The principal repairs and improvements noted as made since the last inspection (October, 1903) are as follows: About 13 per cent. of the crossings have been renewed; 34.0+ miles of new 90-pound rail have been laid, replacing lighter and worn rails; 30.30 miles of track have been reballasted with gravel, and 20.20 miles with cinders, and about 8 miles of gravel and 10 miles of cinder ballast distributed and being put in; bridges Nos. 31 and 32, light structures, have been replaced with new and stronger bridges; two open culverts have been rebuilt; one arch culvert lined with concrete, and a stone box culvert that had failed been replaced with iron pipe; bridge No. 11, at Wellsville, has had masonry rebuilt, and the masonry to Nos. 18½, 27, 30, 31 and 32 has been extensively repaired; the masonry to 7 open culverts has been repaired and considerable repointing done to the masonry of other structures; extensive repairs have been made to station buildings at Wellsville, Carrollton and Dunkirk a new pump house has been erected at Alfred, a coal trestle, roundhouse and transfer sheds at Salamanca repaired, a new block tower erected at Almond and a waiting shed at Elkdale; 26 iron bridges have been repainted; extensive repairs have been made to the docking along the stream between Hornellsville and Tip Top, also at bridge No. 22 at Scio, and some riprap put in at various places to protect the foot of slopes; 2.15 miles of second track have been completed and put in operation; a new passing siding has been

constructed at Almond, a new water tank and stand pipe at Wellsville, new interlocking plants put in at Almond and Carrollton, and extensive repairs made to the coal pockets at Salamanca; 17.2 miles of fencing have been entirely rebuilt and 19.07 miles extensively repaired.

*Recommendations.*

That the ditches in cuts needing it east of Dunkirk be cleaned; that the remainder of the bridges needing it be repainted that the fences be put in proper repair, and that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade.

*Bradford Division.*

(Inspected October 5, 1905.)

The portion of the Bradford division in this State connects with the main line of the Allegheny division at Carrollton, and extends to the Pennsylvania State line, near Limestone, a distance of 7.98 miles, single track, and have approximately 5 miles of sidings and yard tracks.

The general alignment is good and the grades light. The maximum curve is 3 degrees, and the maximum grade, 15 feet per mile. The roadway is properly graded and well drained.

There is but one bridge in the roadway; it is a through truss over the Allegheny river, near Riverside; it is in good condition, has proper masonry, standard ties and guard timbers, in good repair, but no inside guard rails. There are several timber trestles, either pile bents or framed bents with pile foundation; they are of standard construction throughout and in good repair. The open culverts and cattle passes are constructed entirely of timber; they are sufficient and properly maintained. There are no arch culverts. Box culverts and iron pipe drains are in good condition.

The cross-ties—mixed white oak, yellow pine and chestnut, in about equal proportions—are 7x9 inches, 8 feet 6 inches in length, and laid at the rate of 2,816 to the mile of track; their general condition is good, they are fairly well spaced and full spiked.

The track is laid entirely with 80-pound steel rail, connected by angle plates 30 inches in length with six bolts. The rail is in very fair condition, all the connections full bolted and bolts tight. All switches are split point; rigid and automatic stands are both in use, and all have proper targets. Switch and semaphore lamps show red light for danger and white for safety. All frogs are spring rail. No derailing switches are apparently needed. The alignment and surfacing of track are good and the outer rail on curves correctly elevated. The track is ballasted with cinders and gravel in fair quantity.

One track of the Western New York and Pennsylvania railway is crossed at grade at Riverside; the crossing is protected by a tilting board signal and all trains are required to come to a full stop before crossing.

The right of way is entirely cleared and fairly clean. The fences are of wire and in poor repair. The highway crossings are properly graded, well planked and protected by signs of the diamond and "X" form. There are no cattle guards maintained.

Mile and whistle posts are properly located. There are no overhead obstructions.

No interlocking plants are maintained excepting at the junction with the Allegheny division at Carrollton. The movements of trains are governed by the telegraphic train order system.

The only station building is located at Limestone; it is in fair condition and properly furnished.

Since the last inspection (October, 1903) approximately 30 per cent. of the cross-ties have been renewed; one mile of track has been reballasted with cinders; a new roof has been put on the station building at Limestone and the station repainted; .32 miles of fence has been entirely renewed and 1.84 miles repaired.

*Recommendations.*

That inside guard rails be maintained on the bridges and trestles; that the fences be put in proper repair, and that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

*Meadville Division.*

(Inspected October 6, 1905.)

The portion of the Meadville division in this State extends from a connection with the Allegheny division at Salamanca to the Pennsylvania State line, near Grant, a distance of 49.24 miles, and has 15.52 miles of second main track, the second main track extending from Salamanca westerly, a distance of 1.7 miles, to Bucktooth, and from Jamestown to Lakeville. The portion of the Buffalo and Southwestern branch of the Buffalo division between Waterboro and Jamestown, 10.60 miles, is operated under the management of this division as a westbound main track for both roads, and between the same two points the main track of this division is operated as an east-bound track for both lines. There are approximately 22.50 miles of sidings and yard tracks in this State.

The general alignment is first-class; the maximum curve is 3 degrees and 40 minutes, located between Ashville and Watt's Flats; the maximum grade is 63.36 feet per mile, between Ashville and Watt's Flats. A new line has been surveyed and work on it is about to be commenced to reduce this grade. The roadway is well graded and the drainage system good; sub-drains have been extensively laid in the ditches of wet cuts.

The steel and iron bridges are in good condition and well painted. Nos. 12.2, 17.68, 22.57, 23.38 and 25.03 are light for the class of motive power the company desires to use and arrangements are made for replacing them with stronger structures. The masonry is in good condition, the ties and guard timbers standard and in proper repair. Inside guard rails are maintained. There are no timber structures remaining in the roadway except on the portion of the Buffalo and Southwestern branch of the Buffalo division which is operated by this division; remarks concerning those structures will be found in the report on the Buffalo and Southwestern branch of the Buffalo division. The open culverts and cattle passes have good masonry; I-beam stringers are maintained on most, and the timber stringers are in proper condition. The ties are properly maintained. A few guard timbers were noted as lacking. The arch and box culverts and iron pipe drains are in good condition.

The cross-ties—approximately all white oak—are 7x9 inches, 8¼ feet in length, and laid at the rate of 2,816 to the mile of track; some spots of poor ties were observed and about 5 per cent. of those now in the track should be renewed this season.

Sixty and twenty-five-one hundredths miles of track are laid with 90-pound, and 3.43 miles with 80-pound steel rail. About one-third of the 90-pound rails is connected by angle plates 24 inches in length with four bolts, and the remainder by angle plates 32 inches in length with six bolts; the 80-pound rails are connected by angle plates 32 inches in length with six bolts. The 90-pound rail is in good condition; the 80-pound rail is considerably worn and should be replaced. The angle plates are full bolted and no loose bolts were observed except in the 80-pound rail. The main track switches are split point and where not connected with interlocking have stands automatic for main track. Switch and semaphore lamps show red light for danger and white for safety. The main track frogs are spring rail. Derailing switches are in all sidings where their use appears necessary. Nearly all are connected with the main track switch stand by interlocking, and where not, have stands provided with targets. The track is ballasted with gravel, generally in good quantity.

One track of the Dunkirk, Allegheny Valley and Pittsburg railroad is crossed at grade at Falconer Junction; the crossing is protected by an interlocking plant. One track of the Jamestown, Chautauqua and Lake Erie rail-

way is crossed at Jamestown; the crossing is protected by an interlocking plant. One track of the Jamestown Street railway (electric) crosses at grade on Main street, Jamestown; the conductors of the electric railway are required to pilot their cars across the track of the steam railroad.

The right of way is entirely cleared and free from brush and rubbish. The fences are of wire, in good repair. The highway crossings are in proper condition and protected by signs of the diamond and "X" form. Wooden slat cattle guards with suitable guard fences are maintained at each boundary of all the highways crossed. Three highway crossings are protected by flagmen, seven by flagmen and gates, and four by electric bells.

Mile posts of stone are maintained; also stone markers for the half and quarter miles. Whistle posts are at the prescribed distance from the highway crossings. all overhead obstructions are protected by warning signals.

The average length of the track sections is six miles, and the force employed upon each consists of a foreman and five laborers. Each gang is furnished with flags, lanterns and torpedoes, and all portions of the track are patrolled daily by some member of the section force.

Interlocking plants are maintained at the end of the double track at Bucktooth, at Red House, governing the cross-over switches and passing tracks, at Waterboro, governing the east end of the double track and the crossing of the Buffalo and Southwestern branch of the Buffalo division, at Falconer Junction, governing the crossing of the Dunkirk, Allegheny Valley and Pittsburgh railroad, and at Jamestown, governing the crossing of the Jamestown, Chautauqua and Lake Erie railway. The movements of trains are governed by the Mozier three-way block system.

The station buildings are generally in good condition. The one at Falconer Junction is not owned by the company and is an old building not well located. Plans are prepared for a new station at this place at a different location, but as yet no work has been done toward the construction of the station. The stations are clean and neat, and furnished similarly to those on the main line of the New York division, and the same remarks apply.

Since the last inspection (October, 1903) about 12 per cent. of the cross-ties have been renewed; 21.6 miles of new 90-pound steel rail have been laid, replacing worn, lighter rail; 18.50 miles of track have been rebalasted with gravel; bridge No. 14, 141 feet in length, has been replaced with plate girder spans on newly constructed or repaired masonry; three open culverts and cattle passes have been rebuilt; one stone culvert has been replaced with iron pipe; the masonry to four bridges has been rebuilt; one station building has been extensively repaired, light repairs made to others, and one has been repainted; four iron bridges have also been repainted.

#### *Recommendations.*

That the missing guard timbers on open culverts and cattle passes be replaced; that necessary renewal of cross-ties be made; that the worn 80-pound rail be replaced, and all loose track bolts made tight.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company has not had sufficient time up to the closing of this report to send an answer. (No. 44—1905.)

#### FONDA, JOHNSTOWN AND GLOVERSVILLE RAILROAD.

(Inspected June 8, 1905.)

On June 8, 1905, I inspected the portion of the Fonda, Johnstown and Gloversville railroad operated by steam power, and respectfully submit the following report:

The portion of the Fonda, Johnstown and Gloversville railroad operated by steam power consists of a main line, from a connection with the New York Central and Hudson River railroad at Fonda to Northville, and the Broad-

albin branch, which connects with the main line at Broadalbin Junction, near Gloversville, and extends to Broadalbin. The length of the main line is 25.5 miles, and of the Broadalbin branch six miles. Both are single track roads, and there are on the two lines approximately 4.82 miles of sidings and yard tracks.

The main line has approximately one mile of track laid with 80-pound steel rail, connected by 4-bolt Weber joints, 6 miles laid with 75-pound steel rail, connected by angle plates 36 inches in length with 6 bolts, and the remainder with 70-pound steel rail, connected by angle plates 24 inches in length with 4 bolts. The Broadalbin branch is laid with 56-pound steel rail, connected by angle plates 24 inches in length with 4 bolts.

The cross-ties are principally cedar; the standard dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,640 to the mile of track.

The roadway of both lines is generally well graded; a few cuts were noted with rather steep slopes and material washing down, clogging to some extent the ditches. At a few places the cuts should be widened and the ditches cleaned.

The steel and iron bridges are in good condition and generally well painted. The last of the truss rail bridges has been removed. The bridge floors are standard and in proper condition. The masonry to bridges, open culverts and cattle passes and arch and box culverts is in fair condition, and repairs or renewals made as necessary. There are no wooden bridges or timber trestles remaining in the roadway, and practically all the open culverts and cattle passes which formerly existed have been covered with solid flooring of rails and the track ballasted over them, eliminating openings to grade.

The cross-ties are in fair condition. Approximately 10 per cent. of renewals will be needed this season.

The main line rail is in good condition, angle plates full bolted and practically all bolts tight. The rail on the Broadalbin branch is considerably worn and many loose rivets were observed. The traffic of this branch is light and the speed of trains slow. All main track switches are split point, in fair condition. Rigid and automatic stands are both in use, and have well painted targets. Switch lamps show red light for danger and white for safety. Rigid and spring rail frogs are both in use on the main line; on the Broadalbin branch all frogs are rigid. They are in good condition, and the frogs, guard rails and the heels of switches are protected by foot guards. Derailing switches are in all sidings where their use is necessary. The main tracks are lightly ballasted with gravel, sand and cinders. The alignment and surfacing of the main line track are good, and of the Boardalbin branch fair for the slow speed at which trains operate on that branch. The curves are about correctly elevated for the speed at which trains are run. The maximum curve is 12 degrees, located at Fonda, and the maximum grade 2 per cent., for about 2.6 miles between Fonda and Johnstown.

One track of this company's electric railroad crosses at grade at Johnstown, and also at three different places in Gloversville. At each of the crossings the conductors of the electric road are required to pilot their cars across the track of the steam railroad.

The right of way is free from trees, brush and rubbish, and is fenced generally with wire. The fences are in places out of repair and need attention. The highway crossings are properly graded, well planked, and protected by signs of the diamond or triangular form. Metallic slat cattle guards are used. Some are missing and many out of repair. Two highway crossings are protected by flagmen, and 15 by crossing signs only. All overhead obstructions are protected by warning signals.

The track sections average 5.3 miles in length, and the regular force employed upon each section consists of a foreman and six laborers. Each section gang is furnished with flags, lanterns and torpedoes. Regular track walkers are not employed, but all sections of the road are patrolled daily by some member of the section force.

The station buildings are in good condition and properly furnished. At Gloversville and Johnstown there are commodious brick stations.

The passenger equipment is in good condition. The coaches have automatic couplers and air brakes, are heated by steam and lighted with oil lamps.



Water for drinking is provided and emergency tools are properly located in the center of the cars. The employees at stations and on passenger trains are uniformed. The freight equipment is properly maintained and all equipped with automatic couplers and air brakes.

Since the last inspection (July, 1903) about 10 per cent. of the cross-ties have been renewed; about four miles of main track have been rebalasted with gravel; one steel plate girder bridge has been put in, replacing a truss bridge constructed of rails; three open culverts have been eliminated by putting on solid flooring of rails and ballasting the track over them; necessary repairs have been made to bridge and culvert floors, also to station and other buildings.

#### *Recommendations.*

That necessary widening of cuts and cleaning of ditches be done; that 10 per cent. of cross-ties be renewed; that loose track bolts on the Boardalbin branch be tightened; that the fences be put in proper repair; that missing cattle guards be supplied and those now in place and out of repair be put in proper condition promptly.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations "will have our prompt attention." (No. 6—1905.)

#### GENESEE AND WYOMING RAILROAD

(Inspected July 13, 1905.)

On July 13, 1905, I inspected the Genesee and Wyoming railroad, and respectfully submit the following report:

The Genesee and Wyoming railroad, a single track, standard gauge line, connects with the Delaware, Lackawanna and Western railroad at Greigsville, the main line extending from that place to a connection with the Buffalo, Rochester and Pittsburgh railway and the Lehigh Valley railroad at Pittsburgh and Lehigh Junction, a distance of 12.12 miles; a branch line connects with the main line at Retsof and extends to a connection with the Western New York and Pennsylvania railway at Retsof Junction, near Piffard, a distance of 2.27 miles. This latter named branch is used only for transportation of freight, and the main line is used principally as a freight line; passengers are, however, carried.

The general alignment of the road is good; all curves light. The grades are also light and regular. The roadway is well graded and thoroughly drained.

All the bridges are steel or iron, of proper construction and suitable strength; the paint on them is getting poor. The bridge floors are of standard construction and in good repair; inside guard rails are maintained on all. There are no timber trestles. There yet remain a few cattle passes constructed entirely of wood; arrangements are made for replacing them with concrete and I-beams or eliminating them. A few open culverts have masonry abutments and timber stringers, all suitably maintained. The box culverts and iron pipe drains are in good condition.

The cross-ties are in first-class condition, evenly spaced and full spiked; the standard dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,816 to the mile of track. About 1½ miles of the main track are laid with 61-pound and the balance with 70-pound steel rail. The 61-pound rail is connected by angle plates 24 inches in length with four bolts, and the 70-pound by angle plates 30 inches in length with six bolts. The 61-pound rail is somewhat worn, but in fair condition for the light traffic on the part of the road where it is used; the 70-pound rail is in good condition. All angle plates are full bolted and the bolts tight. The main track switches are split point and have automatic stands with well painted targets. Night trains are not operated, and the only switch lamps used are in Retsof

yard; these show red light for danger and white for safety. The frogs are rigid, and frogs, guard rails and heels of switches are protected by foot-guards. Derailing switches with targets are in sidings where their use is considered necessary. The alignment and surfacing of the track are first-class, and the outer rail on curves correctly elevated. The track is well ballasted with gravel.

The Attica branch of the Erie railroad and the Canandaigua branch of the New York Central and Hudson River railroad are crossed at grade near Pittsburg and Lehigh Junction; the crossing is protected by an interlocking plant operated from a tower located about midway between the crossings, which are approximately 800 feet apart. There are no derailing switches on either of the railroads at this place. On the New York Central and the Erie roads there are home and distant signals, and on the Genesee and Wyoming home signals only. All trains of the Genesee and Wyoming railroad come to a full stop before crossing; the trains of the other two above mentioned railroads do not stop if signals are in their favor; the view on those roads approaching the crossing is good, and the signals can be seen for a long distance.

The right of way is clear and clean and well fenced with wire. The highway crossings are well graded, properly planked, and protected by signs of the diamond form, suitably located and well painted. Wooden or metallic slat cattle guards with suitable guard fences are maintained at the boundaries of all highways crossed. Mile posts are maintained and the whistle posts are properly located. There are no overhead obstructions less than 20 feet above the track.

The maintenance force consists of a foreman and 15 laborers, who are supplied with the necessary appliances for protecting their work. All portions of the road are patrolled daily.

The station buildings, while small, are in good repair, properly furnished, and sufficient for the requirements.

The road owns three locomotives, one of which is new, and one combination car; all have automatic couplers and air brakes.

The railroad, taken as a whole, is in first-class condition.

#### *Recommendation.*

That the iron bridges be repainted to prevent injury from rust.

A copy of this report was sent to the company which informed this Board that the bridges would be repainted in the spring of 1906. (No. 19—1905.)

#### GLENFIELD AND WESTERN RAILROAD.

(Inspected July 3, 1905.)

On July 3, 1905, I inspected the Glenfield and Western railroad, and respectfully submit the following report:

The Glenfield and Western Railroad, a single track, standard gauge road connects with the Utica line of the Rome, Watertown and Ogdensburg railroad (operated by the New York Central and Hudson River Railroad Company) at Glenfield and extends in a westerly direction to a large timber tract located in the townships of Osceola and Montague, Lewis county, a distance of approximately 13 miles. The western terminus of the road is now at a place designated as No. 22, but is to be extended—and work on the extension is now commenced—to a point farther in the woods, near the headwaters of Fish creek, a distance of about four and one-half miles additional. The grading on the new portions of the road is well under way; no track, however, has yet been laid.

The road is used almost entirely for the transportation of timber and lumber, and very few passengers are carried and but little freight aside from that belonging to the company which owns the railroad.

The grade of the road is very steep for much of its length, the maximum being 269 feet per mile. The road is also very crooked, abounding in curves,

the maximum of which is 16 degrees. A portion of the road is through a narrow ravine, through which runs a small stream which is crossed very frequently on trestles constructed mainly of spruce and hemlock timber.

There is but one iron bridge; it is a lattice deck girder of about 38 feet span and has abutments of concrete masonry. The bridge is of light construction but of sufficient strength for the motive power and rolling stock used upon the road. A portion of the open culverts and cattle passes have abutments constructed of rubble masonry with timber stringers; a large portion of those openings, however, are entirely of wood, framed bents, planked behind to support the embankments, being used in place of masonry. The stringers, ties and guard timbers are principally of spruce and hemlock timber; they have been constructed only about three and one-half years, and the timber as yet is sound and is of sufficient quantity. Inside guard rails are used on the sharp curves and trestles that occur on sharp curves. There are only two trestles remaining excepting where used in crossing streams, and a large portion of one of those has been filled; they are of standard construction, mainly of hemlock, and are as yet in good condition. Some wooden box drains are used for conveying water through the embankment. The box culvert and iron pipe drains are suitable.

The roadway is generally fairly graded; a few cuts, however, through the ravine above mentioned, are in material of a clay or quicksand nature and the slopes have washed to quite an extent, in some cases filling the ditches.

The cross-ties—mixed cedar, hemlock, pine and hard wood—are of standard dimensions; on the curves and steep grades and on the greater part of the road they are laid at the rate of 16 and 17 to a 30-foot rail; on portions of the road through swamps, near the westerly terminal, but 12 and 13 are used to the rail length; they are fairly well spaced, full spiked and in good, sound condition. About one-half mile of the main track, where the grade is light, is laid with 56-pound and the balance with 60-pound steel rail. The rail was second-hand when put in (about three years ago) and although somewhat worn, is in fair condition for the light traffic and slow speed (12 miles per hour) that is maintained. The rails are connected by angle plates 24 inches in length with four bolts. All connections are full bolted and the bolts tight. Most of the switches are split point; a few stub switches are in use; all have rigid stands with proper targets. The frogs are rigid, and the frogs, guard rails and heels of switches are protected by foot-guards. The road is very lightly ballasted with a poor quantity of gravel. The alignment and surfacing of track are fair, having been improved since the last inspection, which was made in July, 1903.

No railroads, steam or electric, are crossed at grade.

The right of way is cleared and fenced with wire, excepting through the portion where no live stock is pastured. The fences are in fair condition. The highway crossings are properly graded, well planked, and protected by signs of the diamond form. A few wooden slat cattle guards are in place, but at most of the highways there are no cattle guards. All overhead obstructions are protected by warning signals.

The section force consists of a foreman and five laborers. No track walkers are employed, but the track is regularly patrolled.

There is but one train operated on the road. Shelter is provided at the various stopping places, but no agents are maintained, the entire business being cared for by the superintendent and train crew and agents of the lumber company.

The equipment consists of two small locomotives, one of which is geared, one combination baggage and passenger car, and six flat cars. The combination car has been added to the equipment since the last inspection. All the equipment has automatic couplers and air brakes and is in proper condition.

Since the last inspection standard floors have been put on the bridges and trestles where previously lacking; additional switches have been put in; some cuts and embankments have been widened; a portion of one of the timber trestles has been filled, and the alignment and surfacing of the track generally improved.

*Recommendations.*

That the clay and quicksand cuts where material has washed down, filling the ditches, be widened and the ditches cleaned; that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed, and that the stub switches be replaced with split point switches.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that all recommendations made would be carried out. (No. 13—1905.)

## GREENWICH AND JOHNSONVILLE RAILWAY.

(Inspected June 20, 1905.)

On June 20, 1905, I inspected the Greenwich and Johnsonville railway, and respectfully submit the following report:

The Greenwich and Johnsonville railway connects with the main line of the Boston and Main railroad at Johnsonville and extends to a connection with the Schuylerville branch of that railroad at Schuylerville, a distance of 21.24 miles—of which 6.59 miles, from Greenwich to Schuylerville, have been constructed and put in operation since the last inspection was made (June 15, 1903). The road is single track, standard gauge, and has approximately 2.25 miles of sidings and yard tracks.

The old portion of the road is well graded and properly drained. Many cuts on the part of the road recently constructed are narrow and through material of a clayey nature which is inclined to wash and to slide. Some of the slopes have broken a considerable distance back from the roadway and the material has been forced forward, filling the ditches, and in some cases reaching to the rail. Slopes in material of this nature will not stand much steeper than two to one, and these were apparently made about one and one-half to one. Extensive work will be needed flattening the slopes and removing material from the ditches. The official of the road who accompanied your inspector stated that all material was very thoroughly removed from the ditches last season, but that when frost came out in the spring and the severe rain storms occurred, the ditches had again become filled. This is undoubtedly correct, and the same thing will occur where material of this sort is encountered for many years to come.

The iron bridges on the old portion of the road are in some cases rather light and will need to be removed if heavier motive power or rolling stock is to be used. The present locomotives weigh only 51 tons, and only an occasional 100,000 capacity coal car is run over the road. These iron bridges are mostly short ones and only one truck in the car would be on the bridge at the same time; therefore, although light, they are sufficient for what is now being operated. The bridges on the newer portion of the road are of modern design and of heavier construction. All are fairly well painted and have standard ties and guard timbers, generally in good repair, and renewals are being made or arranged for as necessary. Inside guard rails are maintained on only a portion of the bridges. They should be placed on all bridge structures exceeding 20 feet in length. There is at the crossing of the Hoosick river near Johnsonville, a Howe truss deck bridge of wood, consisting of two spans of 71 feet each, one of 106 feet, and one of 66 feet. This is the only wooden bridge in the roadway. It is covered, and the timber sound; it is, however, of light construction, but sufficient for the motive power and rolling stock operated over it. The ties and guard timbers are standard, in good repair, and it has an inside guard rail. There is a short piece of timber trestle at either end of this bridge equalling 140 feet in length; also a timber trestle at the north end of a bridge at Greenwich; this is 250 feet in length. The trestles are constructed of yellow pine timber, are of standard design and in good repair. The open culverts and cattle passes generally have good masonry, I-beam stringers, standard ties and guard timbers; a few have ties

and guard timbers needing renewal, which is arranged for. The timber stringers on those where timber is used are of proper dimensions and in good condition. On the new portion of the road there are many box culverts constructed of concrete.

The cross-ties are about 60 per cent, oak on the old line and the balance chestnut; on the new portion of the road they are all tamarack; the dimensions are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track. They are fairly well spaced and full spiked and generally in good condition. Approximately 20 per cent. have been renewed since the last inspection. The old portion of the road has 1 mile laid with 70-pound, 4 miles with 67-pound, 4 miles with 60-pound, and the balance, 4.65 miles, with 56-pound steel rail; the new portion of the road is laid entirely with 70-pound steel rail. All the rail on the new road and the heavier rail on the old road is in good condition. The 56 and 60-pound rail is somewhat worn and some renewal is necessary. The 70-pound rail is connected by angle plates 24 inches in length with 4 bolts; the lighter rail by angle plates 22 inches in length with 4 bolts. The connections are full bolted; some were noted in the lighter, worn rail where bolts were loose, and required tightening. About one mile of 70-pound rail has been laid on curves since last inspection, replacing lighter, worn rail. All main track switches are split point. Rigid and automatic stands are both in use and have proper targets. Switch lamps show red light for danger and green for safety. All frogs are rigid and none are protected by foot-guards. Derailing switches are in all tracks where their use appears necessary. The entire road is lightly ballasted with gravel. Considerable repairs have been made to the ballast since the previous inspection, covering approximately half of the old portion of the road. The alignment and surfacing of the track are fair and the outer rail on curves about correctly elevated for the moderate speed at which trains operate. The general alignment is much broken, curves frequent and sharp. The grades are also considerably broken, and in places steep.

The right of way is well cleared on the old line; along the new portion of the road there is some brush remaining, which should be cut and removed. The fences are of wire, considerably out of repair on the old portion of the road, and some are lacking on the newer portion. The highway crossings are well graded and properly planked. Crossing signs of the finger-board, long-board or diamond form are properly located at the crossing of each highway. The cattle guards are of the wooden slat pattern; some are lacking and many in poor repair. There are no overhead obstructions.

The track sections are approximately seven miles in length, and the force employed upon each consists of a foreman and nine laborers. All portions of the track are patrolled daily, and each section gang is furnished with flags, lanterns and torpedoes.

One track of the Boston and Main railroad is crossed at grade at Johnsonville; the crossing is protected by target and semaphore signals and all trains are required to come to a full stop before crossing. One track of the Hudson Valley electric railroad crosses at grade at Thomson; the crossing is protected by a flagman and all trains, steam and electric, are required to come to a full stop before crossing.

The station buildings, while generally small, are in good repair, clean and neat and properly furnished.

The passenger equipment is in good condition. The coaches have automatic couplers and air brakes, are supplied with drinking water, and have emergency tools properly located; they are heated by stoves and lighted with oil lamps. Passenger trainmen are uniformed. The only freight equipment owned is two flat cars; they have automatic couplers and air brakes and are in proper repair.

#### *Recommendations.*

That necessary resloping of cuts and cleaning of ditches on the new portion of the road be done; that necessary renewals be made of ties and guard timbers of bridges, trestles, open culverts, cattle passes, etc., and that inside guard rails be placed on all exceeding 20 feet in length, where now lacking; that

the worn, light rail be replaced with new and heavier rail and that all bolts in connections be tight; that all brush on the right of way be cut and removed; that existing fences be put in proper repair and fences constructed where now lacking; that missing cattle guards be supplied and those now out of repair be put in proper condition.

A copy of this report was sent to the company and this Board was informed that the company would be governed in accordance with the recommendations of the Board. (No. 7—1905.)

#### JAMESTOWN, CHAUTAUQUA AND LAKE ERIE RAILWAY.

(Inspected September 6, 1905.)

On September 6, 1905, I made an inspection of the Jamestown, Chautauqua and Lake Erie railway, and respectfully submit the following report:

The Jamestown, Chautauqua and Lake Erie railway, a single track railroad, extends from Jamestown on the line of the Meadville division of the Erie railroad, to Westfield, where it connects with the Lake Shore and Michigan railway, a distance of 31.25 miles. It has also a branch line which connects with the Western New York and Pennsylvania railroad at Mayville, and extends to Chautauqua, a distance of 2.68 miles, and has trackage rights over the Western New York and Pennsylvania railroad from Mayville to where a connection is made with the main line; a distance of 1.20 miles. This branch line is called Chautauqua branch, and is only used as a freight road. It owns another branch line known as the Falconer branch which connects with the main line near Jamestown and extends to Falconer, on the line of the Dunkirk, Allegheny Valley and Pittsburgh railroad, a distance of 3.46 miles; this branch road has not been in operation since the last inspection (May, 1903) and is now unfit for use; it cannot be put in operation again until the track and structure have been rebuilt.

#### *Main Line.*

The road is very crooked and many of the curves are sharp. The maximum, aside from one of 18 degrees at Westfield, is 12 degrees. The grades along Chautauqua lake are generally light, but from Mayville to Westfield they are long and steep with a maximum of 106 feet per mile. The cuts and embankments on the older portion of the road, from Jamestown to Mayville, are of fair width and the roadway is generally well drained, but on the newer portion, from Mayville to Westfield, many cuts are narrow, are not properly sloped, and ditches are lacking; the embankments are also narrow in places.

The only span of iron bridge is an I-beam, deck structure over a street in Westfield; it has concrete abutments, standard ties and guard timbers and in good condition. A Howe truss over the outlet to Chautauqua lake in Jamestown is the only span of wooden bridge, and that is in a track used for freight purposes only; the bridge is supported on abutments composed of piling and is very old and getting considerably decayed; it is to be replaced as soon as possible. There is a pile trestle at one end of the Howe truss bridge above referred to and a framed one about three miles from Westfield; both are of proper construction and in good repair. Small pile and framed trestles of two to five or six spans are also used for crossing small streams, the bents of which are generally in fair to good condition but some poor stringers were noted; also, many decayed ties and guard timbers; the attention of the superintendent of the railroad, who accompanied your inspector, was directed to all of them and assurance was given that prompt renewals would be made; at nearly all the places referred to the materials for the work were on the ground and a force of carpenters was engaged putting them in place and had the necessary repairs made to many of the trestles and also to open culverts and cattle passes, most of which are constructed entirely of wood and were in about the same condition. A few of the open culverts and cattle passes on the newer portion of the road, from Mayville to Westfield, have abutments of masonry, but some of them were improperly constructed

of small stone with poor foundation, and need to be rebuilt. Inside guard rails are not maintained on bridges or trestles. Most box culverts are of wood, but appear to be in fair condition. The arch and stone box culverts and iron pipe drains are good.

The cross-ties—about 60 per cent. oak and the balance chestnut—are 6x8 inches, 8 feet in length and laid at the rate of 2,816 to the mile of track, are in fair condition, fairly well spaced and fuel spiked.

Twenty-one and seventeen-hundredths miles of the track, from Jamestown to Mayville, are laid with 60-pound, and the balance with 70-pound steel rail; the 60-pound rail is generally in good condition, but a few rails that have been worn by slipping driving wheels of locomotives need to be replaced; the 70-pound rail is in first-class condition; the 60-pound rails are connected by angle plates 24 inches in length with 4 bolts, and the 70-pound rails by angle plates 34 inches in length with 6 bolts; all of the connections are full bolted and but few loose bolts were observed. The switches are split point and have rigid stands, all in fair condition, and have targets fairly well painted. Switch lamps are only used in the yard at Jamestown. The frogs are rigid, and no foot-guards are used. Derailing switches are in all sidings where their use appears necessary, but targets to the stands are lacking. The alignment and surfacing of the tracks have been materially improved but are only fair; the outer rail on curves is about correctly elevated for the moderate rate of speed at which the trains are scheduled. The older portion of the road is very lightly ballasted with gravel, and weeds and grass are growing freely between the ties; the newer portion of the road is fairly ballasted with gravel. Two main tracks and one siding of the Erie railroad are crossed at grade in Jamestown; the crossing is protected by an interlocking plant. One track of the Western New York and Pennsylvania railroad is crossed at grade at Mayville; the crossing is protected by an interlocking plant. One track of the Jamestown street railroad crosses at grade in Jamestown; the approach to the crossing of both steam and electric tracks, is on steep grade and the cars of the electric railroad do not, at all times, stop before crossing; derailing switches should be put in the track of the electric railroad on both sides of the crossing so arranged that the conductors must cross the track of the steam railroad to close them and hold them closed until the car passes, this to insure the conductor going ahead of his car to see that no train is approaching.

The right of way is free from trees, but much small brush remains and very little grass and weeds have been cut this season. The fences are mostly of wire, considerably out of repair on the older part of and in good condition on the new portion. The highway crossings are very well graded, the planking in good condition, and are protected by signs of the diamond form. No cattle guards are maintained. Two crossings are protected by flagmen and four by electric bells. Mile posts are maintained and the whistle posts are correctly located. There are no overhead obstructions.

The track sections are about five miles in length and a foreman and six laborers are employed upon each. They are furnished flags, lanterns and torpedoes. All the track is patrolled daily.

The only interlocking maintained is at the crossing of the Erie railroad, and at the crossing of, and junction with, the Western New York and Pennsylvania railroad at Mayville. The movements of trains are governed by the telegraphic train order system; semaphore signals have been recently erected at the telegraph stations.

The station buildings are in good repair and have been recently repainted; they have plank and gravel platforms, are furnished with drinking water, have timetables posted in the waiting rooms and are clean and well kept. Station employees are not uniformed.

The motive power and rolling stock is in fair to good repair; the passenger cars have automatic couplers and air brakes, are heated by steam and lighted with oil lamps; drinking water is supplied and emergency tools are properly located; chemical fire extinguishers are carried in the cars. The locomotives and freight cars have automatic couplers and all excepting a few flat cars, used only in construction and maintenance service, have air brakes. All passenger trainmen are uniformed.

*Recommendations.*

That the cuts on the newer portion of the road be properly widened and sloped and ditches cleaned; the Howe truss bridge promptly replaced; necessary repairs to trestles, open culverts and to trestle, open culvert and cattle-pass floors (above referred to) be made as rapidly as possible; that inside guard rails be put on all the bridges and trestles; that worn rails be replaced; all the switch stands be equipped with lamps; all frog, guard rails and heels of switches be protected by foot-guards; targets be put on the stands to derailing switches; that derailing switches be put in the track of the Jamestown Street railway each side of the crossing at Jamestown, so arranged that the conductors must cross the track of the steam railroad to close them and hold them closed until the car passes, the deraill to open automatically; that the brush, grass and weeds be cut and removed; the fences put in proper repair, and cattle guards with guard fences maintained at each boundary of all highways crossed.

*Chautauqua Branch.*

The Chautauqua branch is fairly level, has light curves, is very well graded and drained, has only small openings for passage of water, all wooden structures in medium to fair repair, the ties same kind and about the same condition as the main line; the rail—60-pound steel—fairly good. This branch is only used to carry freight to and from the Assembly grounds at Chautauqua, trains only going over it about once a day in each direction, at slow speed, and is in suitable condition for that operation.

*Falconer Branch.*

The switch connecting with this branch has been taken out and the branch has not been in operation for a year or more. It is not in condition for use and cannot be operated unless very extensively repaired.

A copy of this report was sent to the company with a letter making the recommendations those of this Board. The company replied that the items were being taken up in detail and most of the suggested improvements have already been made. (No. 41—1905.)

## KANONA AND PRATTSBURGH RAILWAY.

(Inspected July 12, 1905.)

On July 12, 1905, I inspected the Kanona and Prattsburgh railway, and respectfully submit the following report:

The Kanona and Prattsburgh railway, a single track, standard gauge road, connects with the Rochester branch of the Erie railroad at Kanona and extends to Prattsburgh, a distance of 11.44 miles.

The general alignment of the road is fair and most curves light. The grades are also generally light. The condition of the cuts and embankments has been somewhat improved since the last inspection (June, 1903); a few of them, however, are still rather narrow. The ditches have also been improved, but additional cleaning is needed.

The iron bridges, while somewhat light, are of sufficient strength for the class of motive power and rolling stock used; the paint on them, however, is poor. The masonry is poor, and in some cases the bridges are supported on bents placed in front of the abutments. There are no timber trestles nor wooden bridges. Most of the open culverts and cattle passes have masonry abutments; a few of them are constructed entirely of wood. A few I-beam stringers are used, but most of them are timber; all are in fair repair. Some ties and guard timbers need renewal; there are also some decayed wall plates that are failing. The attention of the superintendent of the road, who accompanied your inspector, was directed to the cases where repairs were needed and assurance given that they would be promptly and properly cared for. There are no arch culverts. The stone box culverts and iron pipe drains are in fair condition.



The condition of cross-ties is somewhat improved; about 5,000 new ties have been put in since the last inspection, and approximately 10 per cent. additional renewals will be needed this season. The cross-ties are mainly of chestnut and oak—some hemlock is used; the standard dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,640 to the mile of track.

The entire main track is laid with 60-pound steel rail, connected by angle plates 26 inches in length with 4 bolts. The rails are generally in fair condition; a few have been worn in spots by driving wheels of locomotives slipping when stalled in snow—these should be replaced. All angle plates are full bolted and very few loose bolts were observed. The switches are split point and have rigid stands with targets; the paint on some of the targets is poor. The frogs are rigid and only a few of them are protected by foot-guards. The alignment and surfacing of the track have been somewhat improved, but are still irregular; the trains, however, are scheduled at slow speed. The track is lightly ballasted with gravel, and grass and weeds are growing plentifully between the ties.

The right of way is cleared; grass, weeds and small brush are now being cut. The fences are of wire and considerably out of repair. New planking is needed at some of the highways, but the crossings are fairly graded and are protected by signs of the banner form. Many of the signs need repainting. Cattle guards are not maintained. There are no mile posts, but whistle posts are at the prescribed distance from the highway crossings. There are no overhead obstructions.

The section force consists of a foreman and eight laborers, who are furnished with necessary appliances for protecting their work.

There are only two stations at which agents are maintained. The station buildings, while small, are in fair condition, clean and neat and apparently sufficient for the requirements.

The road owns one locomotive, one combination baggage and passenger car, one baggage car, five box cars, four gondolas and two flat cars; all are equipped with automatic couplers; the combination car has air brakes and the baggage car has pipe for air—all others have hand brakes. These cars are used only in local service and mainly for hauling the company's materials and supplies. The locomotive has automatic couplers and air brakes. The passenger trainmen are uniformed.

#### *Recommendations.*

That narrow cuts and embankments be widened and ditches cleaned; that iron bridges be repainted; that necessary renewals and repairs be made to masonry and to the ties and guard timbers, wall plates, etc., of the open culverts and cattle passes; that approximately 10 per cent. of cross-ties be renewed; that the worn rails be replaced; that necessary repainting be done to targets of switch stands; that the remaining frogs, guard rails and heels of switches be protected by foot-guards; that the grass and weeds be removed from the track and that sufficient ballasting be done that the track may be maintained in proper alignment and surface; that the fences be put in proper repair; that necessary replanking of highway crossings be done; that the dim crossing signs be repainted; and that cattle guards with proper guard fences be maintained at each boundary of the highways crossed.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the board that the recommendations would receive the attention of its officers. (No. 18—1905.)

#### KEESEVILLE, AUSABLE CHASM AND LAKE CHAMPLAIN RAILROAD.

(Inspected August 17, 1905.)

On August 17, 1905, I inspected the Keeseville, Ausable Chasm and Lake Champlain railroad, and respectfully submit the following report:

The Keesville, Ausable Chasm and Lake Champlain railroad connects with the Delaware and Hudson Company's railroad at Port Kent, and extends to Keeseville, 5.64 miles, and has approximately .5 of a mile of sidings and yard tracks.

The road is considerably crooked; maximum curve nine degrees. The grades are long and for a considerable portion of the distance 85 feet per mile. The cuts and embankments are of fair width and the roadway is properly drained.

The only iron bridge is a cantilever structure across Ausable Chasm, the end spans of which are 75 feet each, and the center span 100 feet. The metal work is in good condition and fairly well painted. Timber stringers are used. The ties and guard timbers are in fair condition. At either end of this bridge there is a framed bent trestle, the one at the westerly end consisting of eight spans, and the one at the easterly end of twelve spans. They are of standard construction. The one at the westerly end requires some repairs to blocking, and should have new ties; the one at the easterly end is in good condition. There are two other framed bent trestles in the roadway, one of 16 spans and the other of 10 spans. They are of standard construction; the one of 10 spans is in good repair and has had new ties recently put on; in the one of 16 spans there are one decayed post and three sills which need prompt renewal; the attention of the engineer of maintenance of the road, who accompanied your inspector, was directed to these and assurance given that they would be promptly cared for. All open culverts and cattle passes except one are constructed entirely of timber. No. 1, near Keesville, is considerably decayed and needs entire renewal, and No. 8, the second opening from Port Kent, requires new ties and guard timbers; the others are in proper condition. Most box culverts are of timber and apparently in fair condition.

The cross-ties—mixed oak and chestnut—6x8 inches, 8 feet in length, and laid at the rate of approximately 2,640 to the mile of track, are in fair condition, necessary renewals having been made; they are evenly spaced and full spiked. Some long ties have been recently put in and the rail is distributed for electric operation of the road by the third rail system. The work of placing the third rail has not yet been commenced.

The rail now in track is 60-pound steel, somewhat worn but in fair condition for the light traffic and slow speed maintained. The rails are connected by angle plates 19 and 24 inches in length and fish plates 20 inches in length with 4 bolts. The connections are full bolted and practically all bolts tight. All switches excepting in Keeseville yard are split point and nearly all have automatic stands. Switch stands have proper targets. Rigid and spring rail frogs are both in use. No frogs, guard rails or heels of switches are protected by foot-guards. The alignment and surfacing of track are very fair and the outer rail on curves properly elevated for the speed of trains maintained. The track is ballasted with gravel in fair quantity.

The right of way is clear and clean and fenced with wire in fair repair. The highway crossings are properly graded, planking in good condition, and are protected by signs of the diamond form. No cattle guards are maintained. There are no mile posts. Whistle posts are properly located. There are no overhead obstructions.

The track is maintained by a foreman and three laborers, and the road is patrolled daily.

The station buildings, while small, are apparently sufficient for the requirements; they are in good repair, clean and properly furnished.

The company owns one locomotive and one combination car; they have automatic couplers and air brakes, the car is heated by stoves and lighted with oil lamps; water for drinking is provided and emergency tools are properly located in the car. Trainmen are uniformed; station employees are not.

#### *Recommendations.*

That the repairs to trestles, open culverts and cattle passes above noted as required, be promptly made; that inside guard rails be placed on the bridges and trestles; that the stub switches be replaced with split point

switches; that the frogs, guard rails and the heels of switches be protected by foot-guards, and that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company with a letter of recommendation and the company informed the Board that many of the repairs have already been made "and the company intends, as soon as funds are available, to replace all wooden trestles with concrete abutments and culverts, where necessary." (No. 35—1905.)

#### LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY.

(Inspected July 10, 1905.)

On July 10, 1905, I inspected the portion of the Lake Shore and Michigan Southern railway in the State of New York, and respectfully submit the following report:

The Lake Shore and Michigan Southern railway is a double track line extending in this State from a connection with the New York Central and Hudson River Railroad in Buffalo to the Pennsylvania State line, a distance of 69.50 miles, and has completed about 12 miles of third and fourth tracks, the third and fourth tracks extending from West Seneca yard to Lake View. Work is now in progress and a considerable amount of track practically completed for extending the two additional tracks westward from Lake View to the State line.

The physical condition of this road is first-class, as is also the work done and being done in connection with the additional tracks. The general alignment is excellent, all curves light, the maximum being but one degree and thirty minutes. The grades are also light; much work has been done improving them and reducing them to a maximum of 16 feet per mile. The cuts and embankments are of full width and proper slopes, and the roadway is well drained; sub-drains of tile are used in ditches of wet cuts, with good results.

All bridges in the roadway are steel or iron with standard floor systems, all in good condition, and are erected on masonry abutments. Inside guard rails are maintained on all the bridges. The only wooden bridges are overhead highway and farm bridges; they are properly maintained. There is one temporary trestle, which is thoroughly secure and is to remain only during the time that abutments are being built and bridge put in to eliminate a grade crossing. The stone arch and box culverts and iron pipe drains are in proper condition.

The cross-ties are practically all oak, dimensions 7x9 inches, 8½ feet in length, and are laid at the rate of 2,640 to the mile of track; they are evenly spaced, full spiked and in sound condition, necessary renewals having been made. About 42 miles of the track are laid with 100-pound and the balance with 80-pound steel rail. The 100-pound rails are connected by angle plates 40 inches in length with six bolts, and the 80-pound by angle plates 24 inches in length with four bolts. The rail is generally in first-class condition; necessary renewals have been or are being made. All angle plates are full bolted and bolts tight. All switches are split point and have rigid stands with proper targets. The main track switch lamps show red light for danger and white for safety. Spring rail frogs are used, and all frogs, guard rails and the heels of switches are protected by foot-guards. Derailing switches are in all sidings where their use appears necessary, and have proper targets. The alignment and surfacing of the track are excellent and the outer rail on curves properly elevated for the fast speed at which express trains run. The road is well ballasted with gravel.

Two freight tracks of the Erie Railroad are crossed at grade in Buffalo yard; the crossing is protected by a tilting board signal and all trains are required to come to a full stop before crossing. Two tracks of the Buffalo Creek railroad are crossed far South Buffalo; the crossing is protected by an interlocking plant. One freight track of the Erie railroad is crossed at

Dunkirk; the crossing is protected by an interlocking plant. The crossing of the single track of the Jamestown, Chautauqua and Lake Erie railway which formerly existed at Westfield has been eliminated.

The right of way is free from trees, brush and weeds and well fenced; fences are generally of wire. The highway crossings are thoroughly graded, well planked, and protected by signs of the diamond form, properly located and well painted. Wooden slat cattle guards with proper guard fences are maintained at most highway crossings; at a few, where the construction of additional tracks is now in progress, cattle guards are lacking. Nine highway crossings are protected by flagmen, five by flagmen and gates, and two by electric bells. Mile posts are maintained and the whistle posts are at the prescribed distance from the highway crossings. All overhead obstructions are protected by warning signals.

The track sections are approximately four miles in length, and the average force employed upon each consists of a foreman and twelve laborers. Regular track walkers are employed, who spend their entire time patrolling the track. All section gangs are provided with flags, lanterns and torpedoes for protecting their work. All facing switches are protected by watchmen.

Interlocking plants are maintained at the junction with the New York Central and Hudson River railroad at Buffalo, the crossing of the Buffalo Creek Railroad in South Buffalo, the west end of West Seneca yard, at the cross-over switches at Bay View, the west end of the four tracks at Lake View, and the crossing of the freight track of the Erie road at Dunkirk. Automatic electrical block signals, located about a mile apart, are in operation, governing the movements of trains on all portions of the road except through Buffalo yard, where they are now being erected.

The station buildings are in first-class condition, clean and neat and furnished with drinking water; timetables are posted in the waiting rooms and there is a sign on the front of each station giving its name. Station platforms are of plank, gravel and concrete, and are well maintained. The station grounds and yards are well kept, and at the important stations there are lawns with flowers, ornamental plants, shrubs, etc. All stations are furnished with fire protection; at the small ones there are chemical extinguishers and water buckets, and at the larger ones hydrants with hose connection.

The passenger equipment is in first-class condition; drinking water is provided and emergency tools are properly located in the center of the cars; all have automatic couplers and air brakes, are heated by steam and lighted with gas, oil or electric lamps; chemical extinguishers and water buckets are carried in the cars. All freight equipment has automatic couplers and air brakes. Box cars have grab-irons on the sides and ladders on the ends. The running boards are properly maintained. Dining or buffet cars are run in all long distance trains. All locomotives observed were in good condition and properly equipped.

Since the last inspection (May, 1903), about 20 per cent. of the cross-ties have been renewed; 42 miles of 100-pound steel rail laid in repairs, replacing lighter and worn rails; new masonry has been built or masonry extended on a great number of structures where additional tracks are being constructed, also masonry to open culverts, cattle passes, arch and box culverts and iron pipe drains has been extended where this work has been going on; an iron bridge near Angola has been replaced with a masonry arch; at several places and for long distances the grades have been reduced by lowering cuts or raising embankments; the two additional tracks used in freight service have been extended about 10 miles; a large amount of grading has been done, and many miles of additional track have been laid for the extension of the two additional tracks; the grade crossing of the Jamestown, Chautauqua and Lake Erie railway at Westfield has been eliminated the tracks being changed so as to run to the Westfield station on the southerly side of the Lake Shore tracks, and not crossing; three new sets of crossing gates have been put in where previously there had been maintained flagmen; necessary repairs have been made to fences; a new and commodious passenger station of brick and stone has been erected at Westfield; necessary repairs have been made to other station buildings, and repainting done where needed.

*Recommendations.*

That the missing cattle guards be supplied.

A copy of this report was sent to the company with a letter making the recommendation in the report the recommendation of this Board. The company informed the Board that it would comply with the recommendation. (No. 16—1905.)

## LAKE CHAMPLAIN AND MORIAH RAILROAD.

(Inspected August 17, 1905.)

On August 17, 1905, I inspected the Lake Champlain and Moriah Railroad, and respectfully submit the following report:

The Lake Champlain and Moriah railroad connects with The Delaware and Hudson Company's railroad at Port Henry, and extends to Mineville, a distance of 7.86 miles.

The road is constructed with three switchbacks in order to overcome the great difference in elevation. The curves are frequent and sharp, with a maximum of 10 degrees. The grades are very steep, approximately 211 feet per mile for much of the distance. The roadway is properly graded and well drained.

The iron bridges are in first-class condition. Two new plate girder bridges have been put in, replacing light iron bridges. The bridge floors are standard and in good repair. The bridges are well painted and the masonry in first-class condition. Inside guard rails are not maintained. The open culverts and cattle passes have masonry abutments, in good condition; all but one have I-beam stringers; the one with timber stringers may be eliminated by changing the line, and the stringers now in are sufficient and in good condition. All have standard ties and guard timbers, properly maintained. The arch and box culverts and iron pipe drains are in proper condition.

The cross-ties—mixed yellow pine and oak—6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track, are in good sound condition, evenly spaced and full spiked.

The entire track is laid with 90-pound steel rail, all but two miles of which has been put in since the last inspection (September, 1903). The rails are connected by angle plates 24 inches in length with four bolts, and 30 inches in length with six bolts. The rail is in first-class condition, all angle plates full bolted and the bolts tight. The main track switches are split point; rigid and automatic stands are both used and all have proper targets. Derailing switches are in all sidings where their use is necessary. The frogs are rigid, and no foot-guards are used. The alignment and surfacing of track are good and the outer rail on curves properly elevated for the moderate speed at which the trains are operated. The track is well ballasted with sand, cinders, and screenings from mine.

The right of way is free from trees. Some small brush remains, which should be removed. The grass and weeds have been cut. The fences are of wire and board; three miles of new wire fence have been erected since the last inspection; considerable of that remaining is out of repair. The highway crossings are properly graded, well planked, and protected by signs of the diamond form. No cattle guards are maintained. There are no mile posts. Whistle posts are at the prescribed distance from the highway crossings. There are no overhead obstructions.

The regular section force consists of a foreman and fifteen laborers. All portions of track are patrolled daily. No passenger trains are operated. Passengers desiring to ride are carried in the caboose of the ore train, the road being used almost entirely for the transporting of ore from the mine at Mineville to Port Henry.

The equipment consists of six locomotives, the heaviest weighing about 115 tons; all are equipped with automatic couplers, five of them with air brakes, and one with vacuum brakes; seven flat cars, which have pin and link couplers and hand brakes; 275 four-wheel ore cars, of which 30 have auto-

matic couplers, the balance pin and link couplers, and all equipped with lever brakes; 12 eight-wheel ore cars, equipped with automatic couplers and air brakes; one directors' car with automatic couplers and air brake; two coaches with link and pin couplers and hand brake; one combination car with automatic couplers and hand brake, and two flangers with link and pin couplers and hand brake. All the equipment observed appeared to be in fair condition.

#### *Recommendations.*

That inside guard rails be maintained on the bridges; that the frogs, guard rails and the heels of switches be protected by foot-guards; that brush on the right of way be cut and removed; that cattle guards with proper guard fences be maintained at the boundaries of the highways crossed, and that necessary repairs be made to fences.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with. (No. 34—1905.)

#### LEHIGH AND HUDSON RIVER RAILWAY, AND ORANGE COUNTY RAILROAD.

(Inspected August 8, 1905.)

On August 8, 1905, I inspected the Lehigh and Hudson River railway and the Orange County railroad, and respectfully submit the following report:

The Lehigh and Hudson River railway extends from Belvidere, New Jersey, to Greycourt, N. Y., on the line of the Erie railroad, 63.2 miles, the portion in New York State being from the New York State line, near New Milford, to Greycourt, 14.5 miles, and has 5.63 miles of sidings and yard tracks. The Orange County railroad connects with the Lehigh and Hudson River railway at Hudson Junction, near Greycourt, and extends to Maybrook, on the line of the Central New England railway, a distance of 10.7 miles, and has 2.4 miles of sidings and yard tracks.

The general alignment of both roads is fair. The maximum curve on the Lehigh and Hudson is five degrees, and on the Orange County, six degrees. The grades of both roads are also generally light, the maximum on each being 52.8 feet per mile. The Lehigh and Hudson River is well graded and properly drained; the Orange County is also generally well graded; one cut, however, near Craigsville, through quicksand material, is rather narrow and has slopes upheld by sheet piling. This piling is in very fair condition, and that cut, as well as other portions of the roadway, is very well drained. No sub-drains are used.

The iron bridges are in good condition, except that some of them need repainting to prevent injury from rust. The bridge floors are standard and in good repair. Inside guard rails are maintained several light iron bridges have been replaced with stronger structures and all are sufficient for the class of motive power and rolling stock used. The masonry is good. There are no wooden bridges excepting those for carrying highways or private crossings over the railroad. There are no trestles on the Lehigh and Hudson River; those on the Orange County are of standard construction and in proper repair. Open culverts and cattle passes have generally good masonry; the masonry to several has been rebuilt and to a few others will require rebuilding in the near future, all of which is arranged for. Most stringers to those structures are of plate girder or I-beams; the few timber stringers are sufficient and in good condition. The ties and guard timbers are standard and properly maintained. There are no arch culverts. The stone box culverts and iron pipe drains are apparently in proper condition.

The cross-ties—about one-half chestnut and the balance mixed yellow pine and oak—are of standard dimensions, proper renewals made, and are laid at the rate of 2,816 to the mile of track; they are well spaced and full spiked.

The Lehigh and Hudson has 4.8 miles laid with 80-pound, and the balance, 65-pound steel rail; the Orange County is laid entirely with 60-pound steel

rail. The 80-pound rails are connected by angle plates 30 inches in length with six bolts; the 65 and 60-pound rail by angle plates 24 inches in length with four bolts. The rail is in very good condition, all angle plates full bolted and bolts tight. The main track switches are split point. Switch stands are automatic for main track and have well painted targets. Switch and semaphore lamps show red light for danger and white for safety. All frogs are rigid. Frogs, guard rails and the heels of switches are protected by foot-guards. Derailing switches are in all sidings where their use is necessary, but the stands for them are generally devoid of targets. The alignment and surfacing of track are good and the curves properly elevated. The track is ballasted with gravel and cinders in medium quantity.

Two tracks of the New York, Ontario and Western Railway are crossed at grade at Burnside; the crossing is protected by a new and complete interlocking plant with 24 levers. There are derailing switches in all tracks approaching the crossing, and home and distant signals on both railroads.

The right of way is free from trees, brush and rubbish. Grass and weeds have been cut and removed. The fences are of wire and in good repair. The highway crossings are well graded, properly planked, and protected by signs of the diamond form, the paint on some of which is dim. Metallic slat cattle guards with proper guard fences are maintained at each boundary of the highway crossings. One highway crossing of the Lehigh and Hudson is protected by crossing gates. Mile posts are maintained and the whistle posts are properly located. All overhead obstructions are protected by warning signals.

The track sections on the Lehigh and Hudson are six miles in length, and the force employed upon each consists of a foreman and six laborers; on the Orange County they are five miles in length, and the force employed one foreman and five laborers. Each section gang is furnished with flags, lanterns and torpedoes. All portions of the road are patrolled daily.

No interlocking plants are maintained except at the crossing of the New York, Ontario and Western railway at Burnside. The movements of trains are governed by the telegraphic train order system. After a train passes a station a red flag is displayed for five minutes, during which time no other train is allowed to proceed; a green signal is then displayed for an additional five minutes and any train passing during that period must go under full control prepared to stop within the range of vision.

The station buildings at Stone Bridge, Lake Station and Sugar Loaf, on the Lehigh and Hudson, are old buildings and need to be replaced; all stations on the Orange County are also old, and at nearly all of them no agents are employed; the passenger traffic on that line is extremely light, averaging only about one passenger per day. The remaining stations on the Lehigh and Hudson are in first-class condition; all at which agents are maintained are clean and neat, water for drinking is furnished and time tables are posted in the waiting rooms. The station platforms are of plank and gravel and properly maintained. The station employees wear uniforms. All the passenger equipment has automatic couplers and air brakes. The passenger cars, excepting those operated on mixed trains, are heated by steam; water for drinking is provided, and emergency tools properly located in the cars; they are lighted with oil lamps. The freight equipment appears to be in good condition. All cars have automatic couplers, and 64 per cent. of them are equipped with air brakes.

Since the last inspection (August, 1903) a new switch has been put in at the turntable at Maybrook, 670 feet in length; switch to the Maybrook creamery, 540 feet in length; passing siding at Greycourt extended 980 feet; Lake passing siding extended 900 feet; Lake freight siding 454 feet, and the milk switch at New Milford extended 55 feet; a new creamery has been erected at Maybrook; bridges Nos. 26, 46, 48, 50, and 51 on the Lehigh and Hudson, formerly light iron structures, have been replaced with steel bridges; open culverts and cattle passes on the same road, Nos. 37, 39, 55, 56, 57 and 59, have been entirely rebuilt, including masonry; necessary repairs have been made to bridges, open culvert and cattle pass floors and most of these on the Orange County entirely renewed; 3 iron bridges have been repainted and arrangements are made for repairing others needing it;

about 6,800 cross-ties have been renewed on the Lehigh and Hudson, and 6,000 on the Orange County; 2.4 miles of new 80-pound steel rail have been laid on the Lehigh and Hudson, replacing lighter, worn rail; about two miles of track of the Lehigh and Hudson and 1½ miles of the Orange County have been rebalasted with cinders, and approximately four miles of new wire fence have been erected.

#### *Recommendations.*

That the necessary repainting of bridges be done; that the stands of derailing switches be furnished with targets, and that the dim crossing signs be reprinted.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that "it would be a pleasure to comply with recommendations of your Inspector." (No. 26—1905.)

#### LEHIGH AND NEW ENGLAND RAILROAD.

(Inspected August 9, 1905.)

On August 9, 1905, I inspected the portions of the Lehigh and New England Railroad in the State of New York, and respectfully submit the following report:

The portions of railroad in this State operated by the New England Railroad Company consist of the Campbell Hall Connecting railroad which connects with the Pine Island branch of the Erie railroad at Pine Island Junction, and extends to the New Jersey State line, a distance of 3.78 miles, with approximately one-third of a mile of sidings and yard tracks, and the Pochuck railroad, which connects with the Campbell Hall Connecting railroad at Glenwood Junction, and extends to the New Jersey State line, a distance of 2.7 miles, and has .02 miles of sidings. Both are single track roads.

The alignment of the Campbell Hall Connecting railroad is mostly tangent, and curves very light. The grades are also light, and for most of the distance level. The Pochuck railroad is crooked and mostly on curves the maximum of which is 16 degrees. The grades of this road are also very steep, being 211 feet per mile for much of its length. The Campbell Hall Connecting railroad is nearly all on embankment. Some of the embankments are narrow and need reinforcing. The few cuts are of proper width and properly drained. The Pochuck railroad is not well graded; the cuts are narrow, slopes steep, and much of the embankment needs reinforcing. The roadway is fairly drained.

There are no bridges on either of the railroads. The streams of the Campbell Hall Connecting railroad are crossed on pile or framed bent trestles, which are of standard construction and generally in fair repair, and arrangements are made for additional repairs to those needing them. All open culverts and cattle passes on that line are also constructed entirely of wood and are in fair condition. There are no trestles on Pochuck railroad. The open culverts and cattle passes have generally poor masonry, some of which needs prompt attention. Men are engaged rebuilding abutments of one and putting in a solid flooring of rails, and necessary attention is promised the others. In the swamp near Glenwood Junction, on the Pochuck railroad, is a waterway of about 8 feet opening; this is constructed entirely of timber and settles several inches when a train passes over it, coming back again after the train has passed. It is reported that the muck or soft material under this structure is 50 or more feet in depth and that the solid timbering under it is several feet in thickness and about 25 feet in length parallel with the roadway. Trains cross this very slowly, and there is little danger of accident, operated in that manner. It is not, however, a proper structure, and should be replaced with a pile bridge or a bridge on pile foundations. There are no arch culverts. The box culverts are in fair repair.



The cross-ties—mainly yellow pine and chestnut—are of standard dimensions and laid at the rate of 2,640 to the mile of track on the Campbell Hall Connecting, and 2,464 on the Pochuck. Many of the ties at joints, on the Campbell Hall Connecting, have skewed on account of the creeping of the rails, and should be straightened; also about 10 per cent. of the ties on that line and 5 per cent. on the Pochuck should be renewed.

The Campbell Hall Connecting is laid with 60-pound steel rail, in fair condition, connected by angle plates 24 inches in length with four bolts, full bolted. A few angle plates were observed that were cracked and some bolts are loose. The Pochuck is laid with a mixture of 56 and 60-pound rail, in fair condition. The rails are connected by angle plates 24 inches in length and fish plates 22 inches in length with four bolts; the angle and fish plates are full bolted and most bolts tight. The main track switches are split point and have automatic stands with fairly painted targets. All frogs are rigid. No frogs or guard rails are protected by foot-guards. Derailling switches are in sidings where their use is required; the stands, however, lack targets. The alignment and surfacing of track are only ordinary, but have been somewhat improved. The tracks are very lightly ballasted with gravel.

There are no trees remaining on the right of way; some small brush yet remains, and grass and weeds are being cut. The fences are of wire, generally in poor repair and in places missing. The highway crossings are fairly graded, planking in proper condition and are protected by signs of the diamond form. No cattle-guards are maintained. There are no mile posts. Whistle posts are apparently properly located. There are no overhead obstructions.

The track section of which these roads are a part is about 9 miles in length and the force employed consists of a foreman and five laborers. The track is regularly patrolled, and the section man furnished with proper appliances for protecting their work.

There are no station buildings at which agents are maintained in this State, and only mixed trains are operated. The trainmen are not uniformed.

#### *Recommendations.*

That the narrow cuts on the Pochuck branch be widened and the embankments of both lines be reinforced where necessary; that the open culverts and cattle pass masonry needing it be promptly rebuilt; that the floating timber culvert on the Pochuck branch near Glenwood Junction be replaced with a permanent structure; that necessary renewal of cross-ties be made and the skewed ties on the Campbell Hall Connecting be promptly straightened; that the cracked angle plates be immediately replaced; that the frogs, guard rails and the heels of switches be protected by foot-guards; that all derailling switches have stands with proper targets; that all brush on the right of way be cut and removed, fences put in proper repair, and that cattle-guards with proper guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations are being carried out as rapidly as possible. The small bridge near Glenwood Junction has been repaired and is now in fair condition for slow operation. (No. 27—1905.)

#### LITTLE FALLS AND DOLGEVILLE RAILROAD.

(Inspected July 5, 1905.)

On July 5, 1905, I inspected the Little Falls and Dolgeville railroad, and respectfully submit the following report:

The Little Falls and Dolgeville railroad, a single track, standard gauge road, connects with the main line of the New York Central and Hudson River railroad at Little Falls and extends to Dolgeville, a distance of 10.32.

The road is considerably crooked; maximum curves 9 degrees. The grades are steep and long, the maximum 110 feet per mile. The roadway is generally well graded and properly drained; there are two cuts, however, one at the summit and the other near Dolgeville, through material of clay and quicksand nature; these cuts, while originally graded at about regular slopes and width, should be additionally widened and the ditches in them should be cleaned.

The steel and iron bridges, while light, are sufficient for the class of motive power and rolling stock used and are in very fair condition, excepting that they should be repainted to prevent injury from rust. The superintendent of the railroad, who accompanied your inspector, advised that paint had been procured and that the repainting would be commenced promptly. The timber trestles, of which there are several, some of them long and high, are constructed principally of hemlock timber; they have been quite extensively repaired and patched, and while at present in safe condition, additional repairs and renewals are needed. Your inspector observed that quite an amount of timber was on hand and already distributed for that purpose, and that a force of about eight carpenters was engaged putting in the timber; he was also advised that additional timber was ordered and that very extensive repairs were already arranged for. The open culverts and cattle passes, mainly constructed of hemlock timber, are in about the same condition as the trestles; repairs have also been made to them and additional repairs are promised. The ties and guard timbers to the bridges, trestles, open culverts and cattle passes, are of standard dimensions and generally in good condition; repairs and renewals are also to be made to them. The arch and box culverts and iron pipe drains are apparently in good condition.

The cross-ties—mixed cedar, pine and oak—are of standard dimensions, and necessary renewals have been or are being made; they are evenly spaced, full spiked, and laid at the rate of about 2,816 to the mile of track. The rail—all 60-pound steel—connected by angle plates 24 inches in length with four bolts, is in fair condition for the light traffic and moderate speed (25 miles per hour) maintained. All the connections are full bolted and bolts tight. The main track switches are split point and have rigid stands with proper targets. Switch lamps are not maintained. The frogs, guard rails and heels of switches in yards are protected by foot-guards. The alignment and surfacing of the track are very good and the outer rail on curves properly elevated. The track is lightly ballasted with gravel and cinders.

No railroads, steam or electric, are crossed at grade.

The right of way is cleared and free from brush and rubbish. The fences are of wire and in fair condition. The highway crossings are suitably graded, properly planked, and protected by signs of the diamond form. Wooden or metallic slat cattle-guards are in place at each boundary of all the highways crossed and have proper guard fences. There are no overhead obstructions.

The section force consists of two foremen and 18 laborers. Track walkers are not employed, but all portions of the road are patrolled regularly.

The station buildings are in good condition, clean and neat and properly furnished.

The equipment consists of two locomotives weighing about 45 tons each, 1 combination baggage and passenger car, 1 coach, 2 open cars, 2 box and 4 flat cars. All have automatic couplers and air brakes excepting the flat cars, which are used only in maintenance service—they have pin and link couplers and air brakes. The equipment is in good condition.

Since the last inspection (July, 1903), 32,000 feet B. M. of Georgia pine and 54,000 feet B. M. of Pennsylvania hemlock have been used in repairs to the structures; about 1,500 cross-ties have been renewed; some repairs have been made to the ballast; both locomotives have been thoroughly overhauled and repaired; extensive repairs have been made to the passenger cars, and necessary repainting done; two new milk stations have been erected; necessary repairs have been made to station buildings, and all the buildings owned by the company have been repainted.

*Recommendations.*

That the clay and quicksand cuts be widened and ditches in them cleaned, and that all the timber structures be carefully watched and all poor timber replaced.

Subsequently a supplementary report was made up as follows:

ALBANY, N. Y., September 23, 1905.

J. S. KENNEDY, Esq., *Secretary, Board of Railroad Commissioners, Albany, N. Y.*

DEAR SIR.—Replying to yours of September 16th, requesting me to give more in detail the recommendation of improvements to the timber structures of the Little Falls and Dolgeville Railroad:

In the roadway of the Little Falls and Dolgeville Railroad there are several extensive trestle structures, principally of hemlock timber. Those trestles have been built several years and renewals have recently been made to sills, posts, caps, braces, stringers, ties and guard timbers. Entire bents have not be replaced, but the poor timber in them has been generally. The inspection reveals that there were some other timbers arriving at the point where renewal was needed. To attempt to describe in a report just where all such timber is located would be a very difficult matter. None are in an unsafe condition; otherwise, your attention would have been called to it and the dangerous places described as accurately as possible.

The Superintendent of the railroad accompanied your inspector when the examination was made, and to him was pointed out the timbers considered necessary to be replaced. Material was on hand at most of the places, and a force of carpenters was engaged making repairs, and the Superintendent advised that the work would be promptly and properly done.

Trusting that this explanation will be satisfactory and sufficient, I remain,  
Respectfully yours,

J. D. SHULTZ,  
Inspector.

Copies of these reports were sent to the company with a letter making the recommendations in the reports the recommendations of this Board. The company replied that the recommendations would have its prompt attention. (No. 14—1905.)

*MANHATTAN RAILWAY.*

(Inspected April 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17 and 18, 1905.)

I herewith respectfully submit report of an inspection of the Manhattan Railway (elevated), operated by the Interborough Rapid Transit Company, made April 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17 and 18, 1905.

The Manhattan Railway consists of the following lines of elevated railroad, all within the city of New York: The Second Avenue line, extending from Chatham Square to 129th street, 7.44 miles, all double track, and having 3.03 miles of center track and 2.67 miles of yard tracks and sidings; the Third Avenue line, extending from South Ferry to 129th street, with branches to City Hall, 34th street ferry and Grand Central station, 9.34 miles, all double track, and having 4.58 miles of center track and 3.98 miles of yard tracks and sidings; the Sixth Avenue line, extending from Morris street to 159th street, 10.39 miles, all double track, including branches, and having 4.94 miles of center track and 12.62 miles of yard tracks and sidings; the Ninth Avenue line, extending from South Ferry to 53d street, 4.78 miles, all double track, and having 2.06 miles of center track and 1.21 miles of yard tracks and sidings; the Suburban line, extending from 129th street, Third avenue, to Bronx Park, 5.23 miles, all double track, and having .88 miles of center track and 6.74 miles of yard tracks and sidings.

The inspection was made by walking underneath the structure and also upon the track, the entire distance of all the lines. From the street surface,

foundations, columns, girders and connections were examined, and from the track additional observation was made of the girders and connections, and the ties, guard timbers, rails, frogs, switches, interlocking plants and track appliances generally were examined.

No defective foundations or connections of the columns with the foundations were discovered on any of the lines. The columns themselves were all in good condition, no signs of weakness showing; the latticed columns, however, through the lower or business portion of the city have their bases to quite an extent filled with waste paper and refuse; this should be removed, and the bases of the columns kept clean,—the accumulation of materials in the base retaining moisture and causing rust to form, which injures the metal. The girders and connections are in an improved condition, much work having been done reinforcing and strengthening the weaker places. As recommended by your Honorable Board in previous years, this work has been thoroughly done so far as completed, and additional reinforcing and strengthening are now in progress, several large gangs of iron workers being now engaged, principally on the Sixth Avenue line, where, in addition to the reinforcing of the longitudinal girders new cross girders are being put in, replacing lighter ones. No defects were discovered that in any way endangered the safety of the structure, and minor defects, including an occasional loose rivet in laterals, etc., have promise of prompt attention. No loose rivets were discovered in the main members. A large portion of the structure needs repainting, and while some men are now engaged at that work, a larger force is needed, as it should be done promptly, to prevent accumulation of rust.

The cross-ties and guard timbers are generally in good condition; a few places, however, were observed—and the attention of the inspector of the railway company, who accompanied your inspector, was directed to those places—where the ties were becoming considerably decayed and where the tie-plates were much worn, bent or broken, and doing injury instead of being of benefit. New ties should be promptly put in, and the worn, bent and broken tie-plates replaced or removed. Inside guard timbers are maintained on the entire structure.

The plank walks alongside the track are in good condition; the railing is also properly maintained. I observed, however, that considerable refuse materials had been allowed to accumulate on the top of the structure, generally placed on the walk; this should be promptly removed and the walks kept clear. It occasionally becomes necessary, from stoppage of trains, for passengers to get off the cars between stations and walk to the station, and there should not be materials piled along the walk, making it necessary for them to take chances of coming in contact with the third rail while getting around such obstructions.

The rail, practically all 90-pound steel, is in very fair condition and renewals are being made where necessary. The connections are all in good condition, full bolted and bolts tight. All switches are split point, and all facing switches and practically all trailing ones are either connected with interlocking plants or protected by signals. Switch lamps show red light for danger and green for safety, a change having been made in that respect since the last inspection, when white was shown for safety signal. Spring rail and rigid frogs are both in use, but most main track frogs are spring rail. All are properly maintained.

The interlocking plants are well maintained, and many of them have been extended and improved.

The station buildings are generally in good condition, clean and neat, and most of them well painted.

Nearly all the platforms have been extended to accommodate seven-car trains, and those not now sufficiently long for seven-car trains are to be extended wherever practicable. The station platforms are properly lighted, also the interiors of stations and the stairways leading to them. A supply of water and pails for fire protection are kept in all stations.

Among the extensive alterations and additions made to the structure since the last inspection, the following were noted:

*Second Avenue line.* Ten-inch I-beams put in between longitudinal girders at north end of Second avenue for extension of sidings; additional girder put in at 128th street, and yard track changed; two 20-inch girders put in space between diverging tracks, at 128th street.

*Suburban line.* Sixteen middle track spans of girders put in between 164th and 166th streets; 8 girders for cross-over north of 149th street; 2 spans of middle track girders for turnout at 147th street; 5 cross girders and 10 longitudinal middle track girders for cross-over between 135th and 136th streets.

*Third Avenue line.* An additional girder placed in City Hall branch near City Hall, and track changed; 44 cross girders and 88 longitudinal girders for middle track from 51st to 58th streets; 5 lattice cross braces from east to west columns, with headers at column No. 182 east and west; this is at Canal street.

*Sixth Avenue line.* Approach constructed to new inspection shed at 159th street yard; the knee braces removed between floor beams and top of main structure truss at all stations from Grand to 50th street, inclusive.

*Ninth Avenue line.* Two transverse girders and 7 longitudinal girders erected at Barclay street, in preparation for shifting track on account of widening station platform; new headers put in and transverse girders erected at columns 112 and 113, Fulton street; 4 girders taken out and replaced with new girders, designed to obtain headroom for new stairways; an additional cross girder, for strengthening, put in near Morton street.

The following reinforcements and repairs to structure were also noted:

*Suburban line.* Expansion joints changed at south end of longitudinal girders of the span in which car elevator is located at Bronx Park, making these joints fixed; braces and stiffeners were also applied to the longitudinal girder supporting the elevator, to render the supports more rigid.

*Third Avenue line.* Sole plates have been put in on the ends of 434 longitudinal girders, from South Ferry to 129th street; 13 girder pockets renewed, between Chatham Square and 129th street; tops of 5 columns reinforced with bent plates on side; the supports at the ends of longitudinal girders at 341 points have been reinforced by building in seats and pockets; 7 transverse girders in Front street, 5 near Hanover Square, and 5 near Franklin Square have been reinforced; 216 top plates and 90 bottom plates put on the lighter girders at various places between South Ferry and 110th street.

*Sixth Avenue line.* Transverse girders have been reinforced, on account of new station, at 110th street; the floor system of the pin connected structure between Grand street and 53d street has been reinforced as follows: Three rivets driven in top and bottom of oblique plates at ends of floor beams, uniting them with web beam, in 265 spans; stringer beams which were added to original construction have been taken out and are returned with rigid riveted connections, in 357 spans; top chords of transverse floor beams of 50 spans, Grand to Houston streets, were reinforced by extending previous reinforcement with angle iron;—1,837 longitudinal girders between 53d and 159th streets have been reinforced with bottom chord plates; 29 structure pockets have been renewed, and sole plates applied to 21 longitudinal girders between Morris and Grand streets; the nuts of the foundation bolts have been tightened where necessary; 236 longitudinal girders between 53d and 59th streets, 381 between 83d and 159th streets, 122 on West 53d street, 44 on curve between West 3d street and 6th avenue, and 40 on curve between West 3d street and West Broadway, have been reinforced with double lattice; 148 longitudinal girders between Morris and Grand streets have been reinforced with bottom chord plates, and 58 longitudinal girders on West 53d street with top chord plates; two main structure trusses at 33d street have been reinforced in connection with station alteration made at that point; 15 column bases have been recaulked; 12 transverse girders between 58th and 61st streets have been remodeled and strengthened; 53 sole plates have been put in on West 53d street.

*Ninth Avenue line.* Fifty structure pockets have been renewed, and 36 sole plates applied to longitudinal girders, between Battery Place and 53d street; 397 top chord plates and 312 bottom chord plates have been applied to longitudinal girders, between South Ferry and 53d street.

Many other minor repairs and improvements to the structure were observed of which no note was made.

#### *Switch and Signal Towers.*

*Second Avenue line.* New tower erected at 128th street, north of the tracks entering 129th street station, and the old tower abandoned.

*Third Avenue line.*—Switch tower in Chatham Square pocket taken down on account of extension of station platform and remodeling of yard, and the switch tower at north end of 3d avenue and 129th street raised 5 feet to improve the view, as recommended.

*Ninth Avenue line.* New signal tower being erected at South Ferry.

#### *Stations.*

*Second Avenue line.* The upper flight and intermediate landing of stairway leading from north and south stations to branch station at 34th street, have been widened as recommended.

*Suburban line.* New stairway erected leading from station platform to surface yard at Bronx Park; channel iron frames for extra ticket booths put on stairways at 143d, 156th and 177th streets; 10 lattice cross girders put under 133d street station platform to relieve masonry arches of load of platform; new bridge and stairway erected leading to southwesterly corner of 149th street and 3d avenue.

*Third Avenue line.* Station platform girder at westerly end of station at 129th street moved, to give clearance for Subway cars; alterations made to cast end of South Ferry service station at 129th street by cutting off ends of I-beams and channels and shifting stairway leading from the platform to the overhead bridge; stringers of two stairways at 39th street reinforced; two posts in waiting-room at 34th street branch station removed, and channel beam inserted, to support roof in place of posts; the stringers to the four stairways at 106th street reinforced; the ends of 84 I-beams at South Ferry, Hanover Square, Fulton street, Franklin Square and Chatham Square cut, to give clearance for Subway cars; 3 spans of longitudinal girders put in for extension of station platform at Chatham Square; brackets made and erected to support bridge of stairway at Fulton street, in connection with new entrance through new building at the southeast corner; the stringers of two stairways at 125th street reinforced; ends of 143 I-beams at Grand Central station cut, to give clearance for scraper,—also 9 I-beams at Chatham Square station; the supports and stringers of the first landing at 34th street ferry station reinforced; a new, wide flight of stairs, replacing narrow ones, erected at Hanover Square station; stringers of three stairways at 76th street reinforced,—also of three stairways at Canal street and one at Chatham Square; longitudinal girders erected for extension of north and south-bound station platforms at 53d street; new stairway erected leading to east, on south side of the street, at 34th street ferry; the stringers to two stairways at Houston street reinforced.

*Sixth Avenue line.* The stringers of four stairways at Thirty-third street, four at Forty-second street, four at Bleecker street, and three at Franklin street have been reinforced; two new stairways erected at the easterly side of Sixth avenue at Thirty-third street; the Thirty-third street station extensively changed and an escalator put in leading to the station for downtown trains; new overhead bridge erected at Eighteenth street and at Twenty-third street; a new stairway erected on the southeasterly corner of Twenty-third street and Sixth avenue,—also on the southeasterly corner of One Hundred and Forty-fifth street and Eighth avenue; improvements made to elevator at One Hundred and Sixteenth street, so that but ten seconds time is now consumed in conveying passengers from the basement to the landing; a new station erected at One Hundred and Tenth street with four elevators, each with a capacity of 12 to 14 persons, which convey passengers from the basement to the landing in approximately ten seconds.

*Ninth Avenue line.* Stringers to the stairs of the overhead bridge at Rector street reinforced,—also to two stairways at Thirty-fourth street and two at Fourteenth street; alterations made to the station for southbound trains at Cortlandt street and an additional stairway erected; wooden bents supporting station platform at Rector street replaced with steel frames; additional girders put in and platform at Battery place is now being extended to accommodate seven-car trains.

In addition to the work above described, much has been done on smaller repairing jobs, such as redriving loose rivets in lateral braces and other details of structure, and small station work consisting of repairs to railings and canopy posts, repairs to drip pans and piping, running new piping for drip pans throughout the system, etc. There have been used in repairs to track approximately 146,250 lineal feet of 90-pound steel rail, 67,000 cross-ties, 254,000 lineal feet of guard timber, and 503,500 feet of slatting. Approximately 39 miles of the structure have been repainted; necessary repairs have been made to stations generally and 47 of them have been repainted.

All the cars and motors are in good condition and properly equipped; they are inspected and thoroughly cleaned regularly.

#### *Recommendations.*

That rubbish be removed from the bases of the columns and that they be kept clean; that necessary repainting of the structure be done, to prevent injury from rust, and that the station buildings requiring it be repainted; that necessary renewals of cross-ties be made promptly, and the worn, bent and broken tie-plates be replaced or removed; that refuse materials be removed from the top of the structure and the walks kept clear.

A copy of this report was sent to the company. The Board recommended that the improvements suggested be made and the company stated that they would be given immediate attention. (No. 1—1905.)

#### **MARINE RAILWAY.**

(Inspected November 2, 1905.)

On November 2, 1905, I made an inspection of the Marine railway, and respectfully submit the following report:

The Marine railway is a single track line, 0.444 miles in length, and connects Manhattan Beach and Brighton Beach, Long Island.

The track is laid directly upon the beach, there being no bridges, trestles or culverts in the roadway.

The ties are in first-class condition.

The rails—weighing about 62½ pounds per yard—are in good condition and are connected by angle plates with four bolts. The track is in good alignment and surface.

The road is only operated for a short period during the summer season and is used entirely for transporting passengers between the two beaches above mentioned. It is operated entirely by the overhead electrical trolley system, and the road is in proper condition and properly equipped for such use.

A copy of this report was sent to the company. (No. 43—1905.)

#### **MIDDLEBURGH AND SCHOHARIE RAILROAD.**

(Inspected May 29, 1905.)

On May 29, 1905, I made an inspection of the Middleburgh and Schoharie railroad, and respectfully submit the following:

The Middleburgh and Schoharie railroad connects with the Schoharie Valley Railway at Schoharie and extends to Middleburgh, 5.33 miles, single track, and has approximately one mile of sidings and yard tracks. This

road is operated in connection with the Schoharie Valley railway, the same train operating over both roads. The valley through which the road is built is comparatively level.

The grading is very light, curves infrequent and light—the majority of the road being on tangent—and the grades are light, and for much of the distance comparatively level. The grading has been considerably improved, some cuts and embankments widened and ditches cleaned since the last inspection (July, 1903).

There are no bridges, either wood or iron, in the roadway, and but four open culverts, varying in span from 4 to 14 feet. These have dry masonry walls and timber stringers. The masonry is in fair condition, the stringers, ties and guard timbers of proper dimensions and in good repair. There are two timber trestles, each consisting of four spans of 6 to 8 feet each, and having dry masonry abutments, in fair condition. The trestles are of proper construction and the timber sound. There are no arch culverts. The box culverts and pipe drains are properly maintained.

The cross-ties—6 to 8 inch face, 6 inches in thickness and 8 feet in length—are laid at the rate of 2,640 to the mile; they are in good condition, approximately one-half of them having been renewed since the last inspection. The rail—mixed 50 and 56-pound steel, connected by angle plates 24 inches in length with four bolts—is in good condition, angle plates full bolted, and very few loose bolts were observed. Split point and stub switches are both in use and all have rigid stands, some without targets. No switch lamps are used, as night trains are not operated. The frogs are rigid, and no foot-guards are used. No derailling switches are needed. About three-fourths of the main line track is ballasted with broken stone in fair quantity, nearly all of which has been put in since the last inspection was made. Stone ballasting is now in progress. The alignment and surfacing of the track have been improved and are very fair for the low speed of trains maintained.

The right of way is narrow but clean, and very little fencing is maintained. The highway crossings are properly graded, planking good, and protected by signs of the diamond form; the paint on the signs, however, is poor and the lettering dim. A few pit cattle guards are still maintained, but at most places there are none. There are no overhead obstructions.

The section force consists of a foreman and ten laborers.

The only station building is at Middleburgh; it is a frame building in good repair.

The road owns one small locomotive and one combination car, equipped with automatic couplers and air brakes. These are not now in use, the locomotive and car of the Schoharie Valley Railway now being operated over both roads.

#### *Recommendations.*

That the stub switches be replaced with split point switches and that all switch stands be provided with targets; that the frogs, guard rails and heels of switches be protected by foot-guards; that the right of way be properly fenced; that crossing signs be repainted, and missing cattle guards supplied.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations will be carried out as soon as practicable. (No. 4—1905.)

#### MIDDLETOWN, UNIONVILLE AND WATER GAP RAILROAD.

(Inspected September 28, 1905.)

On September 28, 1905, I made an inspection of the Middletown, Unionville and Water Gap railroad (operated by the New York, Susquehanna and



Western Railroad Company, which is in turn operated by the Erie Railroad Company), and respectfully submit the following report:

The road connects with the main line of the New York division of the Erie railroad and also with the New York, Ontario and Western railway at Middletown, and extends to the New Jersey State line, near Unionville, a distance of 13.65 miles, single track, and has 2.59 miles of sidings and yard tracks.

The general alignment is fair and most curves light; the maximum is 6 degrees. The grades are long but fairly regular, with a maximum of 53 feet per mile. The roadway is well graded and properly drained; no subdrains are used.

The steel and iron bridges are light but in fair condition, and all have been recently repainted. The bridge masonry is fair, the bridge floors standard and in good repair. There are no timber structures remaining in the roadway. The open culverts and cattle passes have generally good masonry; I-beam, timber and rail stringers are used on them; the floors are standard and properly maintained. The arch and box culverts and iron pipe drains are in good condition.

The cross-ties—about  $\frac{3}{4}$  chestnut and  $\frac{1}{4}$  oak—are 7x8 inches, 8½ feet in length, and laid at the rate of 2,816 to the mile of track; their general condition is good, they are full spiked and fairly spaced.

The track is laid entirely with 60-pound steel rail, connected by angle plates 24 inches in length with four bolts. The rail is somewhat worn, but in fair condition for the light traffic maintained on this line. All the connections are full bolted and bolts tight. The main track switches are split point and have automatic stands with proper targets, well painted. Switch and semaphore lamps show red light for danger and green for safety. All frogs are rigid. Derailing switches are in siding where their use appears necessary, but the stands are not equipped with targets. The alignment and surfacing of track are very fair and the outer rail on curves about correctly elevated for the speed at which the trains are scheduled. The track is very lightly ballasted with gravel and cinders.

No railroads, steam or electric, are crossed at grade.

The right of way is entirely cleared and free from trees, brush and rubbish. The fences are of wire and in good repair. The highway crossings are in proper condition and protected by signs of the diamond and "X" form. Some cattle guards are metallic slats and some open pits; at a few of the crossings there are no cattle guards.

No highway crossings are protected by flagmen, gates or electric bells.

Mile posts are properly maintained. There are no overhead obstructions less than 20 feet above the track.

The track sections are about 7 miles in length and the force employed upon each consists of a foreman and four laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the track are patrolled daily by some member of the section force.

No interlocking plants are maintained. The movements of trains are governed by the telegraphic train order system.

The station buildings, while small, are in fair repair; they are clean and neat; water for drinking is providing and timetables are posted in the waiting rooms. The station employees wear uniform.

The standard equipment of the Erie railroad is used and is in proper condition.

Since the last inspection (October, 1903) all iron bridges have been repainted; 20 per cent. of the cross-ties have been renewed; 5 miles of track have been reballasted with cinders; 2 miles of fence have been entirely renewed and 20 miles repaired; necessary repairs have been made to bridge, open culvert and cattle pass floors, and light repairs to the station buildings.

#### *Recommendations.*

That the stands of derailing switches be furnished with targets, and that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed at grade.

A copy of this report was sent to the company, with a letter making the recommendations contained therein the recommendations of this Board. The company informed the Board that, "It is not the policy of this company to maintain cattle guards and wing fences in municipalities where there are no herd laws and cattle are allowed to roam at large. For this reason we have not deemed it necessary to maintain them on the Middletown, Unionville and Water Gap railroad at points where there are no right-of-way fences. At such points where we have switch stands connected with derails, targets will be provided, although we do not make a practice of maintaining lights on these stands at night." ( No. 45—1905.)

#### MILFORD, MATTEMORAS AND NEW YORK RAILROAD.

(Inspected August 8, 1905.)

On August 8, 1905, I examined the portion of the Milford, Mattemoras and New York railroad in this State, and respectfully submit the following report:

When the last inspection of this road was made in November, 1903, the railroad was not in operation, it having been extensively damaged by a freshet that occurred early in October of that year, at which time the abutment to the bridge crossing the Delaware river on the New York side was undermined and partly toppled over, and the embankment and street bridge north of the Delaware river had been practically destroyed by the same freshet. The damage done by the freshet above referred to was not repaired and later floods completed the destruction of the bridge, undermining the pier and completely destroying the New York shore abutment, and the bridge now lies in the river. There are but 0.15 miles of the road in this State, and no part of that can be used until rebuilt.

#### NEW YORK CENTRAL AND HUDSON RIVER RAILROAD.

##### *Pennsylvania Division.*

(Inspected July 21, 1905.)

On July 21, 1905, I inspected the portion of the Pennsylvania division of the New York Central and Hudson River railroad in the State of New York, and respectfully submit the following report:

The portion of the Pennsylvania division of the New York Central and Hudson River railroad in this State consists of a main line, connecting with the main line of the Western division of that road at Lyons and extending to the Pennsylvania State line at Lawrenceville, a distance of 86.07 miles, and the Penn Yan branch, from Dresden, on the main line, to Penn Yan, 6.58 miles. The main line has 52.62 miles of second main track, the larger part of which has been constructed and put in operation since the last inspection (June, 1903). The Penn Yan branch is a single track line. There are on the main line about 83.7 miles of sidings, yard tracks, etc., and on the Penn Yan branch 4.3 miles.

In the construction of the second main track of the main line the alignment of the road has been materially changed in places, and grades and curves reduced. In some places, for long distances, the road has been changed to a new right of way; in others the alignment has been changed on the old right of way and summits lowered or low places raised. The maximum curve in the main line is 10 degrees, located north of Dresden; the maximum grade about 60 feet per mile for about one-third of a mile near Bilsborrow. The Penn Yan branch is very crooked, grades steep and broken; the maximum curve is 19 degrees, located near Keuka Mills; the maximum grade is 123 feet per mile for about one-third of a mile, near Dresden. The roadway is well graded and properly drained; subdrains are used in some of the wet cuts, with good results.

All the bridges in the roadway, with the exception of one trussed stringer span in a trestle on the Penn Yan branch, are steel or iron, in good condition, excepting that some of them would be benefited by an additional coat of paint; all have proper floor systems, in good repair, and inside-guard rails are maintained on them. The new bridges put in in the construction of second track are of modern design and of sufficient strength for the heaviest motive power and rolling stock operated. The balance of the lighter bridges have also been replaced, with structures of similar character. The only wooden structure remaining in the roadway is 14 spans of trestle bridge at Penn Yan, and in this trestle is the trussed stringer span above mentioned. The bents and stringers are in proper repair and a new floor is now being put on. The overhead highway bridges are mainly of wood; a few are of iron; all are in proper repair. The railroad dock at Penn Yan where passengers are transferred between the railroad and the boat is in very poor condition and needs prompt attention. Almost all the open culverts and cattle passes that formerly existed have been replaced with concrete arches or boxes, or had solid flooring of rails put on and the track ballasted over them, thereby eliminating the openings to grade. The few small openings remaining have I-beam stringers and standard floors, in good repair. The arch and box culverts and iron pipe drains are all apparently in first-class condition.

The cross-ties are 6 inches in thickness, 8 inches and upward in width, 8 feet in length, and laid at the rate of 2,816 to the mile of track; about 90 per cent. of them are yellow pine, the balance, mixed oak and chestnut;—a few cedar ties are used on the Penn Yan branch; the ties are evenly spaced and full spiked; necessary renewals have been or are being made.

Ninety-nine and forty-three one-hundredths miles of main track of the main line are laid with 80-pound, 3.56 miles with 76-pound, 34.63 miles with 75-pound, and the balance, 1.07 miles, with 60-pound steel rail. The Penn Yan branch has 0.16 of a mile of main track laid with 65-pound and the balance, 6.42 miles, with 60-pound steel rail. The 80-pound rails are connected by angle plates 36 inches in length with six bolts, the 76 and 75-pound rails by angle plates 40 inches in length with six bolts, the 65-pound rails by angle plates 36 inches in length with six bolts, and the 60-pound rails by angle plates 24 inches in length with four bolts. The main line rail is generally in first-class condition, much of it is new, and renewal of rail is being made as rapidly as necessary. The 60-pound rail on the Penn Yan branch is considerably worn and is to be replaced with heavier second-use rail taken from the main line. All the connections are full bolted and the bolts tight. All main track switches are split point; rigid and automatic switch stands are both in use and all have proper targets, well painted. Main track switch lamps show red light for danger and white for safety; switches on the sidings show green for safety. All main track frogs of the main line are spring rail; some rigid frogs are in use on the Penn Yan branch. All are in proper condition and all frogs, guard rails and heels of switches are protected by foot-guards. Derailing switches are in all sidings upon which cars are left standing, where the grade descends toward the main track, and have stands with proper targets. The alignment and surfacing of the main line are first-class and the curves correctly elevated for the scheduled speed of trains; the alignment and surfacing of the Penn Yan branch are fair and the curves correctly elevated. The main line is ballasted with gravel and cinders in good quantity; the Penn Yan branch is lightly ballasted with gravel and cinders.

The following named railroads are crossed at grade: One track of the Auburn branch of the New York Central and Hudson River Railroad at Geneva,—trains entering upon and running for a distance of about 300 feet on the same track; this crossing is protected by semaphore signals interlocked and operated by a switchman. At the same place there formerly existed a crossing of a switching track of the Lehigh Valley railroad; this crossing has been eliminated since the last inspection. Two tracks of the Erie railroad cross at Corning; the crossing is protected by a modern and complete interlocking plant. One track of the Geneva, Waterloo, Seneca Falls and Cayuga Lake Traction Company's electric railroad crosses

at grade about one mile north of Geneva; the conductors of the electric railroad are required to pilot their cars across the track of the steam railroad.

The right of way of the main line is entirely free from trees, brush and rubbish and is fenced with wire properly maintained; on the Penn Yan branch there is some brush remaining near the track and the fences are in poor repair. The highway crossings are well graded, properly planked and protected by signs of the diamond form which are suitably located and well painted. Metallic slat cattle guards are used; on the new portion of the double track and on the Penn Yan branch many are lacking. Seven highway crossings of the main line are protected by flagmen. There are 76 crossings protected only by the warning sign. On the Penn Yan branch one highway crossing is protected by a flagman and nine by crossing signs only. Mile posts are maintained and the whistle posts are apparently correctly located. All overhead obstructions are protected by warning signals.

The average length of the track sections of the main line is 3.51 miles and the average force maintained on each consists of a foreman and four laborers in winter and six laborers in summer. On the Penn Yan branch the sections are 4.22 miles in length and the same force is maintained as upon the sections of the main line. Regular track walkers are not employed, but all portions of the road are patrolled daily by some member of the section force. Each gang is furnished with the necessary appliances for protecting their work.

No interlocking plants are maintained excepting at the crossing of the Erie railroad. The movements of trains are governed by the telegraphic train order system.

The station buildings are in good repair. Water for drinking is provided and timetables are posted in waiting rooms. The station platforms are of plank and gravel and are suitably maintained. The station grounds and yards are in good condition.

The engines and cars used are of the standard New York Central equipment and all observed were in good condition. Station and passenger train employees wear uniform.

The following are the principal items of improvements and repairs noted as made since the last inspection: About 32 per cent. of the cross-ties have been renewed; 11.2 miles of new 80-pound steel rail and 5.5 miles of relay of 80-pound rail have been put in the main track, replacing worn 75-pound rail; 0.16 of a mile of relay of 65-pound rail has been put in the Penn Yan branch, replacing worn 60-pound rail; about 20.5 miles of the main line track have been rebalasted with gravel and 2.5 miles of the Penn Yan branch with cinders; 2 plate girder bridges have been filled; 5 openings have been eliminated by putting on solid flooring of rails and ballasting the track over them; 1 deck plate girder has been replaced by a new and stronger deck plate girder; 2 through plate girder bridges have been put in, replacing a light through plate girder and a riveted lattice bridge; 2 new overhead bridges have been erected on changed line, eliminating grade crossings; 4 concrete arches have been built, replacing one deck plate girder, one I-beam bridge and two stone box culverts; 3 cast iron pipe culverts have been put in, also one on the Penn Yan branch, those on the main line replacing through and deck plate girders, and the one on the Penn Yan branch replacing an I-beam bridge, and eliminating those openings to grade; the masonry to 12 bridges of the main line has been rebuilt or extensively repaired, also the masonry to two open culverts; necessary repairs have been made to station buildings and those needing it have been repainted; 24 bridges have also been repainted; new yards have been constructed at Beaver Dam and Corning, with trackage of about  $7\frac{1}{4}$  miles.

#### *Recommendations.*

That necessary repainting of bridges be done; that the railroad dock at Penn Yan be promptly repaired; that brush on the Penn Yan branch be cut and removed and the fences put in proper repair; and that cattle

guards with proper guard fences be maintained at each boundary of all highways crossed.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that it would arrange to comply with them. (No. 22—1905.)

#### NEW YORK CENTRAL, HUDSON RIVER AND FORT ORANGE RAILROAD.

(Inspected November 18, 1905.)

On November 18, 1905, I made an inspection of the New York Central, Hudson River and Fort Orange railroad, and respectfully submit the following report:

The New York Central, Hudson River and Fort Orange railroad connects with the main line of the New York Central and Hudson River railroad at Castleton, and extends to the Fort Orange Paper Company's mills, a distance of about one mile. The road is only used for switching purposes. The only rolling stock owned by the company consists of one small locomotive.

The road is very crooked and has sharp curves. The grades are light excepting in the yard at the mill, where branch tracks run on steep grade to coal trestle and to reach various mills. The roadway has been somewhat improved since the last inspection, which was in October, 1902. Some ditches have been made, and the alignment and surfacing of the track also improved. The grading is now fairly well done.

There are no bridges, open culverts or cattle passes. The few small culvert openings are in fair condition.

The ties—mostly yellow pine—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track. Quite extensive renewals have been made and they are now in fair condition for the light traffic and moderate speed.

The rail is of various patterns and weights, weighing from 50 to 60 pounds per yard, considerably worn, and some renewals are needed and your inspector is advised are arranged for. The rails are connected partially by angle plates and partially by fish plates about 24 inches in length with four bolts. Many bolts are loose and a few were observed as lacking. Split point and stub switches are both used. Switch stands are mostly rigid. Very little ballast has been put in, and most of that is cinders; some new ballasting has been done. The alignment and surfacing of the track have been improved and are fair for the light traffic and slow speed maintained.

Taken as a whole, with the exceptions above noted the road is in very fair condition for the purpose for which it is used.

#### *Recommendations.*

That the worn rail be replaced, the missing track bolts supplied, and loose ones made tight.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations had been complied with. (No. 47—1905.)

#### NEW YORK, CHICAGO AND ST. LOUIS RAILROAD.

(Inspected September 5, 1905.)

On September 5, 1905, I made an inspection of the portion of the New York, Chicago and St. Louis railroad in this State, and respectfully submit the following report:

The portion of the New York, Chicago and St. Louis railroad in this State extends from a connection with the Erie railroad near East Buffalo to the Pennsylvania State line near Ripley, a distance of 68.07 miles; and has second main track from Silver Springs to Dunkirk, a distance of 7.84 miles. The double track portion of the railroad is leased from the Lake Shore and Michigan Southern Railway. From the connection of the Erie railroad at East Buffalo, the trains operate over the track of the Erie railroad to its Buffalo station.

The general alignment of the railroad is good and the curves infrequent and light. The maximum is 3 degrees 30 minutes located at Blasdell. The grades are also light, and for much of the distance practically level. The maximum grades are about 30 feet per mile. The roadway is well graded and properly drained. No subdrains are used.

The steel and iron bridges are generally in good condition. Most of them are well painted; a few, however, would be benefited by an additional coat of paint.

The masonry is good; bridge floors standard and in good repair.

Inside guard rails are maintained on all bridges and trestles. Bridge No. 20, located a short distance west of Irving had the foundations of masonry undermined during an extensive freshet which occurred about a year and a half ago. The bridge consists of four spans of deck plate girder, each about 50 feet in length and 5 feet in depth. This bridge was put in a few years ago, replacing a trestle structure. Your inspector does not consider it a proper structure for the place, the girders being so deep and the channel underneath them so shallow that sufficient waterway was not provided for the extensive freshets that frequently occur there. Owing to the freshet above referred to, the water undermined the masonry, so that on pier toppled and the others were more or less damaged; one abutment was also undermined so that it settled; the water at that time rose to such an extent that it ran over the track at the place where the bridge was located and for a considerable distance on either side of it; the bridge is now carried on blocking and piles and is in poor condition should another freshet occur. The masonry should be entirely rebuilt and a through bridge put in, replacing the present structure. There are no wooden bridges remaining excepting those used for overhead highway crossing; these are apparently in good condition. The timber trestles, of which there are quite a number remaining, and some long ones, are of standard construction and in good repair.

Most of the open culverts and cattle passes have good masonry; a few of them, however, are constructed entirely of timber. All are in safe condition.

The arch and box culverts and iron pipe drains are properly maintained.

The cross-ties, all oak, are 6x8 inches, 8 feet in length, and laid at the rate of 2,992 to the mile of track. About 20 per cent. of them have been renewed since the last inspection (June, 1903); they are evenly spaced, full spiked and in good condition. About 25 $\frac{3}{4}$  miles of track are laid with 75-pound and the balance with 65-pound steel rail, all connected by angle plates 24 inches in length, with four bolts. The 75-pound rail is in first-class condition. Some of the 60-pound rail is somewhat worn and is being replaced; about 17 miles of the new 75-pound rail has been laid since last inspection, replacing 65-pound rail.

Main track switches are split point and have automatic stands with well painted targets.

Switch and semaphore lamps show red light for danger and white for safety. The main track frogs are spring rail, and all frogs, guard rails and heels of switches are protected by foot-guards. Derailling switches are in all sidings connected with main track upon which cars are left standing where the grade descends towards the main track. Some of the stands, however, lack targets.

The following named railroads are crossed at grade:

The Buffalo and South Western Branch of the Erie railroad by two freight tracks at East Buffalo; the crossing is protected by a tilting board signal and all trains are required to come to a full stop before crossing.

Two main tracks of the Delaware, Lackawanna and Western railroad at East Buffalo—the crossing is protected by disc signals located on a tower. All trains are required to come to a full stop before crossing. This crossing has been thoroughly treated in former report and steps have been taken toward eliminating the grade crossing, but as yet nothing definite has been accomplished. Two tracks of the Buffalo Creek railway at South Buffalo—the crossing is protected by a tilting-board signal, and all trains are required to come to a full stop before crossing. On track of the Buffalo and Southwestern branch of the Erie at Blasdell—the crossing is protected by a tilting-board signal and all trains are required to come to a full stop before crossing. On track of the Allegheny division of the Erie railroad at Dunkirk—the crossing is protected by a tilting-board signal and all trains are required to come to a full stop before crossing. One track of the Dunkirk, Allegheny Valley and Pittsburgh railroad at Dunkirk, the crossing is protected by a tilting-board signal and all trains are required to come to a full stop before crossing. One track of the Dunkirk and Fredonia Electric railroad on Central avenue, Dunkirk—the conductors of the Electric railroad are required to pilot cars across the track of the steam railroad.

The right of way is free from trees, brush and rubbish. The fences are of wire and some repairs are needed; considerable repairs have been made to fences since the last inspection, and about four miles of new woven wire fence erected.

The highway crossings are well graded, properly planked and protected by signs of the diamond form suitably located and well painted.

The cattle guards are of the wooden slat pattern. Many are lacking and others in need of repair.

Mile posts are not maintained but the distances are marked on the nearest telegraph poles. Whistle posts are at the prescribed distance from all the highways crossed. Fifteen highway crossings are protected by flagmen—one by flagman and gates, and one by an electric bell.

All overhead obstructions are properly protected by warning signals.

The track sections are approximately  $5\frac{1}{4}$  miles in length and the force employed upon each consists of foreman and seven laborers. Each gang is furnished with flags, lanterns and torpedoes. The track is patrolled daily by the section foreman and a portion of his force on hand car.

No interlocking plans are maintained.

The movements of trains are governed by the telegraphic train order system. Train order signals are placed on telegraph stations and the trains are held at those places five minutes after the departure of a freight train and ten minutes after the leaving of a passenger train.

The station buildings are in fair repair. Most stations east of Dunkirk are used jointly with the Western New York and Pennsylvania Railway. Stations are supplied with drinking water and have timetables posted in the waiting room. Platforms are of plank and gravel and in good condition. The station grounds are well kept. Station employees wear uniforms.

The passenger cars are clean and neat and have automatic couplers and air brakes; are heated by steam and lighted by gas and oil lamps; water for drinking is furnished, and emergency tools properly located in the center of the car. Chemical fire extinguishers are carried in the cars.

The freight cars are properly maintained. All are equipped with automatic couplers and practically all with air brakes.

All passenger trainmen are uniformed.

#### *Recommendations.*

That bridge No. 20, west of Irving, which was damaged by the freshet, and is now on blocking, be replaced with a through bridge and masonry rebuilt; that necessary repainting to be done to bridges to prevent rust; that the stands of derailing switches be provided with targets where now lacking; that the fences be put in proper repair; that cattle guards with suitable guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with, excepting that relating to bridge No. 20, west of Irving. The inspector was instructed to confer with the engineer of the company in relation to this matter, which he did, subsequently reporting as follows:

ALBANY, N. Y., December 11, 1905.

*To the Board of Railroad Commissioners:*

GENTLEMEN:—In the matter of the recommendation contained in the inspection report of the New York, Chicago and St. Louis railroad, dated September 16, 1905, reading as follows: "That bridge No. 20 west of Irving, which was damaged by freshet, and is now on blocking, be replaced with a through bridge and the masonry rebuilt,"—from a recent examination made of maps and profile showing the territory in the immediate vicinity of bridge 20 and the grade line of the New York, Chicago and St. Louis railroad and of the Western New York and Pennsylvania railway, which are side by side and both of which cross bridge 20, I have concluded that to raise the grade of those roads  $2\frac{1}{2}$  feet at the bridge, using the present bridge girders, and rebuild the damaged masonry would afford as much additional waterway as to put in a through bridge on the present grade line of the road, and would also improve the grades and general condition of the railroads at that place. Therefore, I desire to offer for your consideration the following alternative recommendation regarding bridge No. 20:

That the damaged masonry be rebuilt and the bridge raised  $2\frac{1}{2}$  feet.

A copy of this report was sent to both above named companies with a letter making the recommendation therein that "the damaged masonry be rebuilt and the bridge raised  $2\frac{1}{2}$  feet" the recommendation of this Board. At the time of writing this report the companies have not had opportunity to reply. (No. 40—1905.)

#### NEW YORK, NEW HAVEN AND HARTFORD RAILROAD.

(Inspected August 25 and 26, 1905.)

On August 25th and 26th, 1905, I made an inspection of the following named lines of railroad, in this State, owned or leased and operated by the New York, New Haven and Hartford Railroad Company and respectively submit the following report:

Main line.—From a connection with the Harlem division of the New York Central and Hudson River railroad at Woodlawn Junction to the Connecticut State line at Port Chester, 14.04 miles, all double track, with 12.42 miles of third and also fourth main track.

Harlem River and Port Chester Railroad.—From a connection with the main line, at New Rochelle, to the Harlem river, 11.50 miles, all double track, with 1.25 miles of third and also of fourth main track.

New England Railroad.—From Fishkill Landing to Wicopee Junction, on the line of the Newburgh, Dutchess and Connecticut railroad, 1.71 miles and from Hopewell Junction on the line of the Newburgh, Dutchess and Connecticut railroad, to the Connecticut State line, near Mill Plain, 28.76 miles, with about 15.00 miles of second main track completed and the balance of its length under construction.

#### *Main Line.*

The general alignment is good and all curves light. The grades are also light and for the greater part of its length, level. The roadway is well graded and thoroughly drained. All the bridges are steel or iron, erected on



good masonry; the ties and guard timbers are standard and well maintained; several new bridges have been erected since the last inspection (September, 1903), replacing lighter ones, and a few others lighter than desired for the class of motive power the company wish to use, are to be replaced soon. Inside guard rails are maintained on all openings to grade. There are no timber structures in the roadway. Open culverts have good masonry, I-beam stringers and standard floors, in good repair. The stone, arch and box, culverts and iron pipe drains are in good condition.

The cross-ties, about 90 per cent. chestnut and the balance oak are 6 x 8 inches, 8 feet in length, and laid at the rate of 3,168 to the mile of track. They are evenly spaced and full spiked. Necessary renewals have been made for the season. All main track is laid with 100 pound steel rail, connected by angle plates, 24 inches in length, with 4 bolts. The rail and connections are in first-class condition.

The switches are split point and have automatic stands with well-painted targets. Switch and semaphore lamps show red light for danger and green for safety. Practically, all frogs in main track are spring rail. Frogs, guard rails and the heels of switches are protected by foot-guards.

Derailing switches are in all sidings where their use is necessary, and have proper targets. The alignment and surfacing of the track are excellent, and the outer rail on curves properly elevated for the fast speed of trains maintained. The track is well ballasted with broken stone. No railroads, steam or electric, are crossed at grade. The right of way is free from trees, brush or rubbish. Fences are only maintained where grazing land adjoins the railroad.

Mile and whistle posts are properly located.

The track sections are about two and one-half miles in length of the road, and the force employed upon each consists of a foreman and eight laborers. All portions of the track are patrolled daily. Each section gang is furnished with flags, lanterns and torpedoes.

All overhead obstructions are protected by warning signals.

Interlocking plants govern all approaches to yards, crossovers and other tracks connecting with the main track.

The station buildings are in first-class condition and properly furnished. The passenger equipment is well maintained; all coaches have automatic couplers and air brakes; are supplied with drinking water and have emergency tools properly located in the center of the car. Emergency tools are also provided for baggage, mail and express cars. The coaches are heated by steam and lighted with gas or electric lamps. The platforms of all cars are protected with gates.

The freight equipment is in good condition; all have automatic couplers and air brakes. The locomotives are in good repair and properly equipped.

The movements of trains are governed by the positive block system.

No recommendations appear necessary.

#### *Harlem River and Port Chester Railroad.*

The cuts and embankments are of full width and proper slope and the roadway is well drained, grading now being done for the construction of additional tracks which, when completed, will make of this line a six-track railroad.

The work, so far as it has progressed, is being thoroughly done. Grades will be changed somewhat, also the alignment, in each case making them better. In the construction of the additional tracks all the present highway and street grade crossings, also the grade crossing of the Port Chester branch of the New York Central and Hudson River railroad will be eliminated by carrying them either over or under the grade of the railroad tracks. There are at present thirteen grade crossings of streets and highways.

All the bridges are of steel or iron, with good masonry; are in proper condition; have standard ties and guard timbers in good repair and inside guard rails are maintained. The drawbridges of which there are two, are protected by home and distant signals, which are interlocked with the

mechanism operating the bridge. A pile trestle bridge at Bay Chester, about 3,500 feet in length, has been nearly filled for half its length, and the entire filling of that portion is to be done soon. The portion of the trestle remaining is of standard construction and in good repair. There are two other timber structures in the roadway, all short and in proper condition. A few of the open culverts have pile bents in place of masonry abutments; but nearly all of them have good stone masonry. A few timber stringers are used, but nearly all are I-beams, and all are of sufficient strength and in proper condition. The floors are standard and well maintained. Arch and box culverts and iron pipe drains are in good repair:

The cross-ties are of the same dimensions as those used in the main line track and are in the same good condition.

About seven and one-half miles of the track are laid with 100-pound and the balance with 74-pound steel rail, all connected by angle plates 24 inches in length, with 4 bolts. Two miles of new 100-pound rail have been laid since the last inspection (September, 1903), and in the construction of the additional tracks it is planned to make all rail, in both the present and the new tracks, 100-pound steel. The 100-pound rail now in track, is in first-class condition; much of the 74-pound rail is considerably worn, especially on curves.

All main track switches are split point and have automatic stands with proper targets, well painted. Spring rail and rigid frogs are both in use, and all frogs, guard rails and heels of switches are protected by foot-guards. Derailing switches having stands with proper targets are in all sidings connected with the main track, where their use is necessary. The grades and curves are light. The alignment and surfacing of track are good and the outer rail on curves properly elevated. The track is well ballasted with broken stone. One track of the Port Morris branch of the New York Central and Hudson River railroad is crossed at grade, at Port Morris; the crossing is protected by an interlocking plant; there are home and distant signals on the New York, New Haven and Hartford line, and home signals and derails on the Port Morris branch, and all trains on that branch are required to come to a full stop before crossing. Two tracks of the Union railway (electric) cross at grade on One Hundred and Thirty-eighth street; the crossing is protected by gates, and the conductors of the electric railway are required to pilot their cars across the tracks of the steam railroad.

The right of way is free from trees, brush and rubbish. Fence is only maintained opposite grazing lands. The public crossings are properly graded and well planked. Crossing signs are of the finger-board design. Flagmen and gates are maintained at all the crossings. No cattle guards are maintained, or apparently necessary.

The mile and whistle posts are properly located.

The track sections are approximately of the same length as upon the main line and the same force maintained.

All overhead obstructions are protected by warning signals.

Interlocking and block signal stations are maintained at Port Morris, Casanova, Bronx River, Van Nest and Pelham Bay, and the movements of the trains are governed by the block signals.

The station buildings are in good repair and properly furnished. The same class of passengers and freight equipment is used as upon the main line and the same remarks apply. When the inspection was made in September, 1903, small cars similar to those used upon the elevated railroads were used for passenger service; those cars are no longer in service, having been replaced with standard equipment.

#### *Recommendation.*

That the 74-pound rail be replaced.

#### *New England Railroad.*

The roadway is well graded and thoroughly drained. Since the last inspection which was made in June, 1903, extensive grading has been done

for the construction of a second main track. About fifteen miles of this second main track has been put in use and other portions are nearly completed. Some portions have only parts of the grading done. In connection with the grading for the second main track, grades and alignment have been improved and the cuts of the existing track widened and resloped where necessary.

The steel and iron bridges are all in first class condition; the lighter ones have been replaced and the new bridges put in in connection with the second main track and are of modern design and of strength suitable for all classes of motive power and rolling stock now in use.

Much of the masonry has been rebuilt and all is now in good condition. Bridge floors are standard and properly maintained. Inside guardrails are laid on all structures open to grade exceeding twenty feet span. There yet remains three spans of wooden Howe truss bridge; they are yet in fair condition, but masonry is now being constructed upon which to erect new steel bridges in their place.

The trestle structures are of standard construction and in fair repair; work is now in progress to eliminate them by putting in bridges, culverts and filling.

The open culvert cattle passes have masonry abutments. Some of them have I-beams and some timber stringers. All are sufficient and in proper condition. The floors are standard and in good repair. The arch and box culverts and iron pipe drains are in good condition.

The cross-ties, mixed oak and chestnut, are 6x8 inches, 8 feet in length and laid at the rate of 2,816 to the mile of track. They are evenly spaced, full spiked and in good condition. 24.57 miles of main track are laid with 79-pound, and 3.2 miles with 78-pound, and the remainder, 2.78 miles with 75-pound steel rail. The new track is being laid with 79-pound rail. The 79-pound rails are connected by angle plates 30 inches in length with 6 bolts.

The 78-pound and the 75-pound rails are connected by angle plates 24 inches in length with 4 bolts. The rail is in good condition; all angle plates full bolted and bolts tight.

All switches are split point and have automatic stands with well-painted targets.

Switch and semaphore lamps show red light for danger and green for safety.

Facing switches at obscure places are protected by distant signals which are interlocked with the switch stands. Derailing switches are in all sidings connected with the main tracks upon which cars are left standing.

The road is considerably crooked but most curves are light. The grades are long but regular and fairly light. The track is in good alignment and surface and the outer rail on curves is properly elevated.

The track is fairly well ballasted with gravel, and additional gravel is now being put in. No railroad, steam or electric, cross at grade.

The right of way is clear and clean and fenced with wire, which is in fair repair. The highway crossings are properly graded, well planked and protected by signs of the finger-board design.

The cattle guards are of the wooden slat pattern. Many are missing where the new work is being done.

All overhead obstructions are properly protected.

A very heavy section and construction force is employed, caring for the existing track and building the new, and each gang is furnished with proper means for protecting its work.

The station buildings are in good repair and properly furnished.

The movements of trains are governed by the telegraphic train order system.

Semaphore signals are located at the telegraph stations and a time block system maintained.

The standard equipment of the New York, New Haven and Hartford Railroad Company is used upon this road, and the same remarks apply as to the main line equipment.

*Recommendations.*

That the missing cattle guards be supplied.

A copy of the report was sent to the company and in a letter the general superintendent stated that in connection with the six-tracking of the Harlem River branch a heavier rail, probably 100-pound, would be laid. The letter stated that missing cattle guards would be replaced. (No. 36—1905.)

## NEW YORK AND OTTAWA RAILROAD.

(Inspected August 14, 1905.)

On August 14, 1905, I inspected the New York and Ottawa railroad, and respectfully submit the following report:

The New York and Ottawa railroad extends from Tupper lake to the Canada line in the St. Lawrence river, near Cornwall, at which point the Ottawa and New York railroad commences, the latter-named railroad extending to Ottawa, and together they are operated as one line of railroad. The length of the New York and Ottawa railroad is 68.4 miles, and it has approximately  $7\frac{3}{4}$  miles of sidings and yard tracks.

The road is very crooked and many of the curves are sharp; the maximum is 13 degrees. The grades are steep and much broken; the maximum is 148 feet per mile. The cuts and embankments on the northerly end of the road are of fair width and proper slopes, and the roadway generally well drained; some cuts near the southerly end, through material of a sandy and gravelly nature, are narrow, have steep slopes, and are devoid of ditches.

There are four iron bridges, one a single span, two of two spans each, and the one across the American channel of the St. Lawrence river, consisting of one span of deck plate girder and three through truss spans. These bridges are all in good condition and newly painted; all have standard floors, in proper repair. Inside guardrails are maintained only on the St. Lawrence river bridge. The masonry to the iron bridges is in first-class condition. The only spans of wooden bridge in the roadway are two of pony Howe truss near St. Regis Falls; they are of 80-foot span each and are in good condition throughout. The overhead highway and farm crossing bridges are in fair to good condition. There are many pile and framed bent trestles, generally low structures, some of them used for crossing running streams. Most of them are in from fair to good repair. Trestles Nos. 110A, consisting of 45 spans, and 112A, consisting of 13 spans of pile trestle, each in a marsh, have settled and the stringers are shimmed up; there is also shimming underneath the ties, in places. These structures should be promptly rebuilt or filled. Nos. 100A, 118B and 125A require stringers renewed. No. 79A needs new floor. Nos. 74B and 77A should be entirely rebuilt. No. 73A needs some repairs. No. 106A wants additional stringers, the present ones being insufficient. All these defects were called to the attention of the officials of the railroad who accompanied your inspector. Nearly all open culverts and cattle passes are constructed entirely of wood, the abutments being either of round or square timber, piles or framed bents, planked behind to support the embankment; a few have masonry abutments. They are generally in fair condition. Attention was called to those needing repairs. The trestle, open culvert and cattle pass floors have standard ties and guard timbers. The stone culverts and iron pipe drains are in good condition. Most openings under the embankments for the conveyance of water are boxes made of cedar timber; these were apparently in fair condition.

The cross-ties—mixed hemlock and cedar—are 6x8 inches, 8 feet in length, and laid at the rate of 2.816 to the mile of track; they are fairly spaced and full spiked; a considerable number of decayed ones were observed, and approximately 10 per cent. of all in track need renewal.

About  $18\frac{3}{4}$  miles of main track are laid with 65-pound, and the remainder with 56-pound steel rail. The 65-pound rails are connected by angle plates 40 inches in length with six bolts, and the 56-pound rails by angle and fish

plates 20 inches in length and angle plates 24 inches in length with four bolts. The rail is in fair condition for the light traffic; all the connections are full bolted and bolts generally tight. The main track switches are split point and have automatic stands with proper targets. Switch lamps show red light for danger and white for safety. The frogs are rigid and all frogs and guard rails are protected by foot-guards. Derailing switches are in all sidings where their use appears necessary, and the stands to them have proper targets. The alignment and surfacing of track have been somewhat improved and are now fair for the moderate speed at which trains are scheduled. The track is generally ballasted with sand in medium quantity.

One track of the Ogdensburg division of the Rutland Railroad is crossed at grade at Moira; the crossing is protected by ball signals and all trains are required to come to a full stop before crossing. One track of the United States and Canada Railroad (operated by the Grand Trunk Railway Company) is crossed at grade at Helena; the crossing is protected by an interlocking plant with home and distant signals on both roads and derailing switches in all tracks approaching the crossing.

There are no trees remaining on the right of way; there is, however, much small brush and a considerable amount of rubbish. The rubbish and brush have since the last inspection (August, 1903) been removed on one side of the track for a distance of about six miles continuously. It has also been removed for short distances on other portions of the road, and some brush and rubbish are now piled for burning. There still remains, however, a large amount of brush, old logs, etc., upon the right of way, all of which should be removed. Grass and weeds have not been cut this season, excepting over a small portion of the northerly end of the road. Fences are only maintained outside the forests; they are of wire and generally in fair repair; considerable new fence has been erected recently. The highway crossings are very well graded—the planking in good condition—and are protected by signs of the "X" or finger-board design. On the portion of the road that is fenced, wooden slat cattle guards are maintained at the boundaries of the highway crossings, and have proper guard fences. Mile posts are maintained, and whistle posts are located at the prescribed distance from the highway crossings. There are no overhead obstructions.

The track sections are approximately 7 miles in length and the force employed upon each section consists of a foreman and five laborers. Each gang is furnished with flags, lanterns and torpedoes, and all portions of the road are patrolled daily by some member of the section force.

The only interlocking plant maintained is at the crossing of the United States and Canada Railroad at Helena. The movements of trains are governed by the telegraphic train order system, semaphore signals being located at telegraph stations.

The station buildings, while small, are generally in fair repair and are clean and properly furnished; most of them, however, lack paint, and a few need slight repairs. Station employees are not uniformed.

The motive power and rolling stock are in fair condition. All cars are equipped with automatic couplers. All passenger cars and 60 per cent. of the freight cars are equipped with air brakes. The passenger cars are heated by steam and lighted with oil lamps; water is provided and emergency tools are properly located in the cars. The freight cars observed were in fair repair. All passenger trainmen wear uniforms.

#### *Recommendations.*

That the narrow cuts be widened and properly ditched; that repairs and renewals to trestle, open culvert and cattle pass structures, as noted above, be promptly made; that inside guard rails be maintained on all the bridges and trestles; that 10 per cent. of the cross-ties be renewed; that all brush, rubbish, grass and weeds on the right of way be cut and removed, and that the station buildings be repainted and necessary repairs made to them.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that it had complied with some of the recommendations and would comply with the remainder. (No. 31—1905.)

#### NEW YORK AND PENNSYLVANIA RAILROAD.

(Inspected July 17 and 18, 1905.)

On July 17 and 18, 1905, I inspected the portion of the New York and Pennsylvania railroad in this State, and respectfully submit the following report:

The New York and Pennsylvania railroad, a single track, standard gauge line, connects with the main line of the Erie railroad at Canisteo and extends to Ceres, on the line of the Pittsburgh, Shawmut and Northern railroad. Of this road 27.1 miles, from Canisteo to near Genesee, are in the State of New York,—also .18 of a mile at Ceres; the balance of the road, about 29 miles, is in the State of Pennsylvania. This report covers only the portions of the road in New York State.

The general alignment of the road is fair, and while curves are frequent, most of them are light, the maximum being apparently about 9 degrees. The grades are also light, but somewhat broken. Many of the cuts, especially those through material of a quicksand nature, are too narrow and the material from the slopes washes down in heavy storms, blocking the ditches; some improvement, however, has been made to the worst of the cuts since the last inspection (August, 1903); also many embankments have been reinforced. Additional reinforcing is needed in many places.

With the exception of a Howe truss bridge of about 90 feet span, across the Canisteo river at Canisteo, all streams are crossed by pile or framed bent trestles. The Howe truss bridge referred to was constructed about five years ago, and is covered; the abutments are pile bents. All timber in the bents and also the bridges are in thoroughly sound condition. The pile and framed bent trestle bridges, also the open culverts and cattle passes, constructed almost entirely of wood, have been very extensively repaired and a large number renewed since the former inspection was made, and are now, with the exception of two or three, renewal of which is arranged for, in good repair. A few trussed stringers are used in some of the trestles for spans of approximately 30 feet. Inside guard rails are not maintained. There are no arch culverts, and most box culverts are constructed of timber; they are apparently in suitable condition. A few pipe drains are used.

The condition of cross-ties is very fair and additional renewals are being made; the standard dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,816 to the mile of track; they are fairly well spaced and properly spiked; the timber is mixed oak, cedar and chestnut. The track is laid with 60-pound steel rail, connected by angle plates 19 and 24 inches in length with four bolts. The rail is generally in fair condition, although a few bent and worn rails were observed that should be replaced. Some angle plates were noted with bolts lacking, and many having loose bolts. All main track switches are split point. Rigid and automatic switch stands are both in use; a few were observed lacking targets. No switch lamps are used. The frogs are spring rail. No frogs guard rails or heels of switches are protected by foot-guards. Derailing switches are in all sidings where their use appears necessary. The alignment and surfacing of track, while somewhat improved, are still irregular, and the elevation of the outer rail on curves varies; the trains, however, operate at slow speed. The track is lightly ballasted with gravel.

There is much brush remaining on the right of way; grass and weeds are now being cut. Considerable grass and weeds are growing between the ties. The fences are of wire, generally in poor repair, and in some places lacking. The highway crossings are very well graded and properly planked. Crossing signs are of the diamond and banner form; those of

the banner form are old and paint dim;—arrangements are made for replacing them with new signs of the diamond form. A few wooden slat cattle guards are maintained, but at most crossings there are no cattle guards. Mile and whistle posts are not maintained. There are no overhead obstructions less than 20 feet above the track.

The track sections are approximately 7 miles in length, and the force employed upon each consists of a foreman and six laborers. Each gang is furnished with flags and lanterns. Regular track walkers are not employed, but all portions of the road are patrolled daily. Trains are operated by the telephone train order system.

The station buildings are generally small, but apparently sufficient for the requirements and are in fair repair and clean. Drinking water is furnished and timetables are posted in the waiting-rooms. The agents wear uniform cap.

The equipment consists of 6 locomotives, 2 coaches, 3 combination cars and 31 flats. The locomotives, coaches and combination cars are equipped with automatic couplers and air brakes; the flat cars have automatic couplers, and 16 of them are equipped with air brakes. The equipment is in very fair condition. The coaches are heated with stoves and lighted with oil lamps. Water for drinking is provided, and proper emergency tools kept in them. All passenger trainmen wear uniforms.

The principal repairs and improvements noted as made since the last inspection are as follows: Several cuts and embankments have been widened and many ditches cleaned; a large number of timber trestles, open culverts and cattle passes have been renewed or extensively repaired; about 20 per cent. of the cross-ties have been renewed; much of the track has been realigned and resurfaced, and several miles of ballast repaired; some repairs have been made to fences, and a large number of crossing signs renewed.

#### *Recommendations.*

That necessary additional widening of cuts and embankments be done and ditches cleaned; that the timber structures in the roadway be carefully watched and renewals and repairs arranged for be made promptly; that the worn and bent rails be replaced; that all switch stands be provided with proper targets; that the frogs, guard rails and the heels of switches be protected by foot-guards; that the alignment and surfacing of track be improved; that all brush on the right of way be cut and removed, and the grass removed from the roadway; that the fences be put in proper repair and missing fence supplied; that cattle guards with guard fences be maintained at each highway of all the highways crossed; that the dim crossing signs be replaced or repainted, and that whistle posts be erected 80 rods from each highway crossing.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that it would comply with the recommendations. (No. 20—1905.)

#### NIAGARA JUNCTION RAILWAY.

(Inspected September 4, 1905.)

On September 4, 1905, I made an inspection of the Niagara Junction railway, and respectfully submit the following report:

The Niagara Junction railway is a single track line, connecting with the Rochester, Lockport and Niagara Falls branch of the New York Central and Hudson River railroad at a point about two miles east of Suspension Bridge and extending to Port Day on the Niagara river, a short distance south of Niagara Falls. It crosses over the Buffalo and Niagara Falls branch of the New York Central and Hudson River railroad and of the Erie railroad south of Echota, at which place a connection is made with the Erie, and near Fort Day a connection is made with the New York Central and

Hudson River railroad. The length of the road is 5.34 miles and it has approximately eight miles of sidings and tracks connecting with the various industries along the Niagara river and in the vicinity of the crossing of the Erie and the New York Central and Hudson River railroad near Echota. The road is constructed almost entirely upon embankment which is of proper width and slopes, and the few cuts are also wide, and well drained.

The steel and iron bridges are in good condition, fairly well painted and have good masonry, some of which has recently been repaired.

The ties and guard timbers are standard and well maintained. Inside guard rails are laid in all. Two short timber trestles yet remain in the roadway. They are of proper construction and the timber in them sound and sufficient.

The open culverts have good masonry, I-beam stringers, and standard ties and guard timbers well maintained.

The arch and box culverts and iron pipe drains are apparently in good condition. The cross-ties, nearly all oak, are 6x8 inches, 8 feet in length and laid at the rate of approximately 2,816 to the mile of track. They are evenly spaced, full spiked and in good condition, necessary renewals having been made. The track is laid with 80-pound steel rail, connected by angle plates 30 inches in length with six bolts. The rail is in good condition, all angle plates full-bolted and bolts tight; main track switches are split point and have the stands automatic for the main track.

The frogs are rigid. The alignment and surfacing of the track is good and the outer rail on curves properly elevated. The track is lightly ballasted with broken stone. No railroad, steam or electric, crosses at grade. The maximum curve is 10 degrees and the maximum grade 2 per cent.

The right of way is free from trees, brush and rubbish. It is not fenced, as no grazing land adjoins the railroad.

The highway crossings are well graded, properly planked and protected by signs of the diamond form.

The track is maintained by a force consisting of a foreman and six laborers, who are furnished with the necessary appliances for protecting their work.

No passenger trains are operated, the road being used entirely for transferring freight between the lines of the Erie and the New York Central and Hudson River railroad and the various industries along its route.

The entire equipment owned by the company, consists of two locomotives and four flat cars. The locomotives have automatic couplers and air brakes and are in good condition. The flat cars have automatic couplers; two of them are equipped with air brakes and the remaining two with hand brakes. These cars are only used to remove refuse, etc., and upon the company's tracks. The road is in good condition for the purposes for which it is used; and no recommendations should be necessary.

A copy of this report was sent to the company. (No. 39—1905.)

#### NORWOOD AND ST. LAWRENCE RAILROAD.

(Inspected July 27, 1905.)

On July 27, 1905, I inspected the Norwood and St. Lawrence railroad, and respectfully submit the following report:

The Norwood and St. Lawrence Railroad, a single track, standard gauge line, connects with the Rome, Watertown and Ogdensburg division of the New York Central and Hudson River Railroad and with the Rutland Railroad at Norwood, and extends to Raymondville, a distance of 7.5 miles, and has about one mile of sidings and yard tracks.

This is practically a new railroad, having been in operation but little more than two years. When last inspected (August 25, 1903) the grading was found imperfectly done, the bridges and culverts in poor condition. In accordance with the recommendations of your Honorable Board at that time, steps were immediately taken to improve matters and the improvement has been quite decided. Many of the cuts have been resloped and proper ditches made. An additional pier has been built at the iron bridge



and the girders braced; the defective masonry has been or is being rebuilt, and, with one exception, the wooden culverts have been eliminated; the remaining one is unnecessary and is to be filled at once. Most of the smaller openings have been eliminated by putting in solid concrete arch or box culverts. Two bridges of about 15-foot span, with beams made of concrete and rails, have been or are being replaced with concrete arches, and now the openings are in safe condition. The low embankments have been raised somewhat and the weak ones strengthened. Additional improvements are to be made to them, thereby reducing short and abrupt changes in grade and making the roadway more firm. The maximum grade, aside from those caused by sagged embankments, is about 75 feet per mile. The alignment is considerably crooked and maximum curve 12 degrees.

The cross-ties, 6x8 inches, 8 feet in length and laid at the rate of about 2,640 to the mile of track, are about three-quarters hemlock and the balance cedar; they are somewhat irregularly spaced on the new portion of the road north of Norfolk, and in some cases but 12 or 13 ties to a 30-foot rail. The superintendent of the railroad, who accompanied your inspector, advised that additional ties would be put in on that portion of the road. The ties are full spiked and are sound.

One mile of the main track is laid with 70-pound,  $\frac{3}{4}$  of a mile with 56-pound, and the balance with 60-pound steel rail. The lighter rails are connected by angle plates 20 and 24 inches in length and a few fish plates 24 inches in length, with four bolts, the 70-pound rails by angle plates 30 inches in length with six bolts. The heavier rail has been put in since the last inspection, replacing lighter rail, and it is expected to replace most of the lighter rail with 70-pound steel rail in the near future. The rail now in track is in fair condition for the light traffic and slow speed maintained. All the connections are full bolted and bolts tight. The switches are split point; rigid and automatic stands are both used. The frogs are rigid. The alignment and surfacing of the track are fair. The track is ballasted with gravel and cinders in light quantity; some additional ballasting has been done.

The right of way is free from trees, brush and rubbish; grass and weeds are now being cut. The fences are of wire and while not in first-class condition, have been much improved. The highway crossings are properly graded, planking good, and are protected by signs of the diamond form. No cattle guards are maintained. There are no mile or whistle posts. There are no overhead obstructions.

The track force consists of a foreman and six laborers, who are furnished with the proper means for protecting their work.

The station buildings, while small, are clean and neat, in good repair and sufficient for the requirements; they are properly furnished.

The equipment consists of 2 small locomotives, 1 combination car, 5 flat cars, 2 box cars, and a flanger. All are equipped with automatic couplers and air brakes and in proper condition.

#### *Recommendations.*

That the sagged embankments be raised and grade made regular; that the cross-ties on the north end of the line be respaced and additional ones put in; that cattle guards with proper guard fences be maintained at each boundary of the highways crossed; and that whistle posts be erected 80 rods from each highway crossing.

A copy of this report was sent to the company and the recommendations therein were made the recommendations of this Board. The company informed the Board that the recommendations had been complied with. (No. 23—1905.)

#### OSWAYO VALLEY RAILROAD.

(Inspected September 17, 1905.)

On September 17, 1905, I made an inspection of the Oswayo Valley railroad, and respectfully submit the following report:

The Oswayo Valley Railroad connects with the Western New York and Pennsylvania railway and the Pittsburgh, Shawmut and Northern railroad at White House, and extends to the Portville Wood Company's plant, a distance of 0.50 miles. It is used only as a switching track for cars to and from the Portville Wood Company's plant and the railroads with which it connects. Its only equipment is one small locomotive. The track is laid with steel rail weighing about 60 pounds per yard. The road is in fair condition for the purpose for which it is used.

A copy of this report was sent to the company. (No. 46—1905.)

#### OTIS RAILWAY.

(Inspected June 28, 1905.)

On June 28, 1905, I inspected the Otis railway, and respectfully submit the following report:

The Otis railway (for a detailed description of which see report of inspection made in August, 1899) has not been changed in manner of construction or operation since that date; it has, however, since the last inspection been changed in grade near the foot of the plane and its length shortened from 1.35 miles to 1.08 miles. In addition to this, the grade has been changed and lowered for about 2,000 feet, thereby eliminating a timber trestle about 1,700 feet in length with a maximum height of about 40 feet. There remain two timber trestles with a total length of 736 feet; they are high structures, the highest one being approximately 80 feet. Since the last inspection (July, 1903) quite extensive repairs have been made to the structures; many new stringers have been put in, some new ties, additional bracing, and a large number of the posts and sills have been spliced. This sort of work has been done until the trestle is now pretty thoroughly patched, and while it is in safe condition for this season it should be entirely replaced or rebuilt before next season's business begins. There is still some poor timber remaining, and to do further patching would appear to be extravagant and none too effective. Many of the bank stringers used where there are cuts or solid embankments are getting old and need renewing; they are not in condition to be regarded as unsafe, at the present time, but are not fit to remain another season. Many ties will also need to be renewed. The track, guard timbers, machinery and cables are in first-class condition. There has been a connection made near the head of the plane and a track constructed connecting with the Catskill and Tannersville railway, and there have been built two 5-ton box cars and two gondolas of the same capacity. These cars, one at a time, are taken over the Otis railway and transferred to or from that road.

#### *Recommendations.*

That necessary renewal of bank stringers and ties be made; that the entire trestle structures be carefully watched and renewals or repairs necessary be made promptly, and that arrangements be made to rebuild or replace the present trestle structures in the near future.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with in the best manner possible and that the road would be made safe, to the satisfaction of the commission. The inspector has been instructed to make another report in the spring. (No. 11—1905.)

#### POUGHKEEPSIE AND EASTERN RAILWAY.

(Inspected August 6 and 7, 1905.)

On August 6 and 7, 1905, I inspected the Poughkeepsie and Eastern Railway, and respectfully submit the following report:

The Poughkeepsie and Eastern railway connects with the New York Central and Hudson River railroad at Poughkeepsie, and extends to Stissing Junction, on the line of the Newburgh, Dutchess and Connecticut railroad, the trains operating from that point on the tracks of that company's railroad to Pine Plains Junction, from which point the Poughkeepsie and Eastern road continues to Boston Corners, on the line of the Harlem division of the New York Central and Hudson River railroad. The entire length of line operated is 39.79 miles, and the track owned, 34.99 miles. It is a single track road and has approximately 3 miles of sidings and yard tracks. A short spur track, about 1,000 feet in length, extends from the switchback connecting with the New York Central and Hudson River railroad at Poughkeepsie, to the Hudson River State Hospital.

The general alignment of the road is very fair, and the maximum curve about 6 degrees. The grades are steep and considerably broken; the maximum is 90 feet per mile. Some of the cuts, through material of a quicksand nature, are narrow, considering the nature of the material through which made, and the slopes have washed or slipped, filling the ditches to a considerable extent. On much of the road the cuts are of fair width and properly drained. The embankments in most cases are of proper width, natural earth slopes, and generally to grade; a few were observed where additional widening would be an improvement. No subdrains are used.

There are no iron bridges, and no wooden span bridges excepting for overhead highway and farm crossings. These are in fair condition. All streams and two large valleys are crossed on trestle structures. Most of those crossing streams have pile bents, generally in fair condition; one of them, however, near Willow Brook, consisting of 8 spans, is in very bad condition, needing immediate attention. Materials were on the ground for rebuilding this structure and your inspector was advised that the work would be commenced the following morning. Several other of the trestles require some repairs. All defects of this character were called to the attention of the superintendent of the railroad, who accompanied your inspector, and he advised they would be promptly remedied. In many cases material was on the ground for that purpose. Most open culverts and cattle passes have masonry abutments and with the exception of two, which need rebuilding, are in proper condition. The stringers are of timber, floors standard, and necessary repairs and renewals made or arranged for. The arch and box culverts and iron pipe drains are in fair to good condition.

About 75 per cent. of the cross-ties are yellow pine, and the balance mixed chestnut and oak; the dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,816 to the mile of track. A considerable number of decayed ones were observed, and about 15 per cent. of all in the track should be renewed.

The track is laid with mixed 65 and 75-pound rail, generally connected by angle plates 22 inches in length with four bolts, and 36 inches in length with six bolts; a few 22-inch fish plates are still in use. The rail is in fair condition for the light traffic and moderate speed maintained; the connections are full bolted and very few loose bolts were observed. The main track switches are split point. Rigid and automatic stands are both in use. Some switches with rigid stands have spring in head-rod of the switch, rendering the switch automatic. Switch lamps are not used, night trains not being operated. Rigid and spring rail frogs are both in use, and none are protected by foot-guards. There are no derailing switches in sidings; a few places were observed, and the attention of the superintendent directed to them, where they are needed. The alignment and surfacing of the track, while somewhat improved, are still irregular. The track is very lightly ballasted with sand and gravel, and grass and weeds are growing in places between the ties.

One track of the Poughkeepsie City and Wappingers Falls Electric railway crosses at grade on North Bridge street, Poughkeepsie; the conductors of the electric railroad are required to pilot their cars across the track of the steam railroad.

All trees on the right of way have been cut; considerable small brush remains, and grass and weeds have not been cut this season. The fences

are of wire, and much of the fencing in poor repair. The highway crossings are properly graded, well planked, and protected by signs of the triangular form, the paint on many of which is dim. No cattle guards are maintained. One highway crossing is protected by a flagman. Mile posts are maintained on the portion of the road from Pine Plains Junction to Boston Corners, and ready for erection on the balance of the road. The whistle posts are apparently properly located. All overhead obstructions are protected.

The track sections are six miles in length, and the force maintained on each consists of a foreman and five laborers. Regular track walkers are not employed, but all portions of the road are patrolled daily by some member of the section force. Each gang is furnished with flags and lanterns for protecting their work.

No interlocking plants are maintained. Trains are operated by the telegraphic train order system.

The station buildings are old, but are clean and neat and properly furnished; some of them need repairs, and nearly all should be repainted. Station agents wear a badge only.

The motive power and rolling stock, while generally old, are in fair repair. Passenger cars have automatic couplers and air brakes, are heated by stoves, water for drinking is provided, and emergency tools are properly located in the center of the cars; they are lighted with oil lamps. Passenger trainmen wear uniforms.

Since the last inspection (July, 1903) about 16,000 cross-ties have been renewed; several trestle structures have been rebuilt and repairs made to others; the alignment and surfacing have been somewhat improved, light repairs made to ballast, and about five miles of new wire fence erected; one new box car has been added to the rolling stock.

#### *Recommendations.*

That the quicksand cuts be widened and proper ditches made; that necessary repairs and renewals, as shown the superintendent of the railroad by your inspector, be promptly made to trestles, open culverts, cattle passes, etc.; that about 15 per cent. of the cross-ties be renewed; that frogs, guard rails and the heels of switches be protected by foot-guards; that derailling switches be put in all sidings connecting with main track, on which cars are left standing, where the grade descends toward the main track; that the track be put in proper alignment and surface; that the brush, grass and weeds on the right of way be cut and removed; that the fences be put in proper repair; that the dim crossing signs be repainted, and that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that it would carry out the recommendations as far as possible, also that the Willow Brook trestle has been entirely rebuilt. (No. 25—1905.)

#### PITTSBURGH, SHAWMUT AND NORTHERN RAILROAD.

(Inspected September 7 and 8, 1905.)

On September 7th and 8th, 1905, I made an inspection of the lines of railroad, in this State, owned, leased, or operated by the Pittsburgh, Shawmut and Northern Railroad Company and respectfully submit the following report:

Main line.—From Olean to a connection with the Delaware, Lackawanna and Western railroad, at Wayland, 76.80 miles, single track, with 11.24 miles of sidings.

Rochester, Hornellsville and Lackawanna Railroad.—From a junction with the main line, at Hornellsville Junction, to Hornellsville, 9.20 miles with 4.26 miles of sidings and yard tracks.

**Shawmut Connecting Railroad.**—From a junction with the main line, at Olean Junction, to a connection with the Western New York and Pennsylvania railway, at S. N. Tower, 2.20 miles with 0.18 miles of sidings.

*Main Line.*

Since the last inspection, which was on August 12 and 13, 1903, the two pieces of railroad, one of which extended from Olean to Bolivar, and the other from Angelica to Wayland, have been connected and the piece of road from Bolivar to Angelica, 24.34 miles in length, constructed; the new piece of railroad and the other two mentioned now forming the main line from Olean to Wayland. The railroad, for much of its length, is very crooked, but the curves not generally sharp. There is, however, one curve at Olean of 29 degrees 30 minutes. The grades are long, generally regular and most of them light. The maximum is practically about 90 feet per mile for a distance of about 600 feet at Grove. The roadway is generally well graded and properly drained. A few cuts, however, on the newly constructed portion of the road are of the quicksand material, and in places the sides have slipped or washed, filling the ditches to a considerable extent. No subdrains are used. The steel and iron bridges are generally in good condition; many of them are new; those on the new portion of the road are erected on concrete masonry; most of those on the older portion of the road on stone masonry. A few of them near Bennetts, recently put in, have temporary bents of piling, which are to be replaced with masonry. The bridges are generally well painted and have standard ties and guard timbers in good repair. Inside guard rails are not maintained. The iron viaduct crossing the Stony Brook Glen near Wayland is a very light structure and practically devoid of paint. The examination developed no indications of failure; the foundations are good and the columns are not deflected. Only the lighter class of motive power is operated across this viaduct and trains run at very slow speed. There are no spans of wooden bridges excepting those used for carrying the highways over the railroad and they are in proper repair. There yet remains in the roadway a large number of pile and frame bent trestles, some of them used for crossing streams; most are low structures and they are generally in fair to good repair. Several were noted near Birdsall and Bennetts with stringers and ties considerably decayed needing prompt renewal. The attention of the officers of the railroad company, in charge of their maintenance, was directed to all the defective materials, and assurance given that necessary repairs will be promptly made. It is expected that in the near future steel bridges will be put in place of all the trestles that cannot be filled. A large number of them have already been replaced with steel bridges and masonry, and many others with arch or box culverts or iron pipe and filling. Most of the open culverts and cattle passes are constructed entirely of timber. They are generally in good repair, and attention was directed by your inspector to all those needing attention. The stone arch and box culverts and iron pipe drains are in proper condition.

The cross-ties, about 25 per cent. cedar, 25 per cent. oak and 50 per cent. yellow pine, are 7x9 inches, 8½ feet in length, and laid at the rate of 2,816 to the mile of track. They are properly spaced, well spiked and in good condition, necessary renewals having been made. Fifty-one miles of the main track are laid with 85-pound and the remainder 25.80 miles with 56-pound steel rail. The 85-pound rails are connected by Weber joints 30 inches in length with 6 bolts; and the 56-pound by angle plates 24 inches in length with 4 bolts. The 85-pound rail is in first-class condition, the 56-pound rail is somewhat worn, and is being replaced with a heavier rail as rapidly as becomes necessary. All main track switches are split point, and most of them have automatic stands and all have well painted targets. Switch and signal lamps show red light for danger and green light for safety. Most main track frogs are spring rail, and most frogs and guard rails are protected by foot-guards. Derailing switches are in all sidings connecting with main track upon which cars are left standing where the grade descends towards the main track; some of the stands lack

targets. The alignment and surfacing of track are good and the outer rail on curves properly elevated. The track is generally very well ballasted with gravel; considerable new ballasting has been done and additional ballast is now distributed. One track of the Western New York and Pennsylvania Railway is crossed at grade at Whitehouse; the crossing is protected by an interlocking plant. One track of the Olean Street railway (electric) crosses at grade the two legs of a "Y" track at Ceres. The conductors of the electric railway are required to pilot their cars across the track of the steam railroad. The grade crossing of the same street railway, which formerly existed north of Ceres and also the highway grade crossing upon which the street car track was laid, has been eliminated by the construction of a bridge in the roadway of the railroad, and taking the highway and the street railroad track underneath. The right of way is free from trees, brush and rubbish; grass and weeds have been cut and removed. Fences are of wire and board and in places considerably out of repair. The highway crossings are well graded, properly planked and protected by signs of the diamond or banner form, some of which are dim and should be repainted. The cattle guards are of the wooden slat pattern; many are lacking and others in poor repair. All overhead obstructions are protected by warning signals. Mile posts are not maintained. Whistle posts are properly located. No highway crossings are protected by flagmen, gates or electric bells. The average length of the track section is six miles, and the force employed upon each consists of a foreman and five laborers. Each gang is furnished with flags, lanterns and torpedoes, and all portions of the road are patrolled daily by some member of the section force. No interlocking is maintained, excepting at the crossing of the Western New York and Pennsylvania railway at Whitehouse. The movements of trains are governed by the telegraphic train order system, semaphore signals being placed at telegraph stations. The station buildings are in fair repair and properly furnished. The motive power and rolling stock are in good condition; all have automatic couplers and air brakes. Passenger cars are heated by steam and lighted with oil lamps. Drinking water is furnished and emergency tools are properly located in the centers of the cars. Passenger trainmen and station employees wear uniforms. Since the last inspection the new portion of the road from Bolivar to Angelica, 24.34 miles, has been completed and put in operation. In addition to that on the old portion of the road, about 25 per cent. of the cross-ties has been renewed. Eight and three-tenth miles of new 85-pound steel rail have been laid, replacing one 56-pound rail. Twenty-four and three-tenth miles of main track have been reballasted with gravel; one steel bridge of 90 feet span has been put in, replacing an iron bridge of 72 feet span. Ten timber trestles have been replaced with iron bridges and masonry and 9 with culverts or iron pipe, and filling. Five cattle passes have been filled. A new station has been built at Olean and one at Scholen; new signal tower at Whitehouse, and engine house, telegraph office, shop office and new storehouse at Angelica. Extensive repairs have been made to stations at Portville, Bolivar, Richburgh, Wirt, Nile, Friendship, Belvidere, Angelica and Grove. The stations at Gorkham, Westons, Portville, Wirt, Friendship, Bennetts, Birdsall, Center, Canaseraga and Hornellsville Junction have been repainted. Fifty-one miles of new woven wire fence have been erected and a few miles of fencing repaired. The grade crossing of the highway and electric railroad at Cases, near Ceres, has been eliminated. New water tanks have been erected at Bolivar, Angelica, Center and Friendship, and a new stand pipe at Olean. Some new cattle guards have been put in, many new crossing signs erected and new station signs have been placed on all the station buildings. New stock pen and chute have been built at Friendship and a new platform of brick at Angelica station. There has been added to the equipment since the last inspection 10 new freight locomotives, 1 switching engine, 2 combination cars, 20 refrigerators and a new snow plough.

#### *Recommendations.*

That the necessary resloping of cuts and cleaning of ditches be done on the new portion of the road where quicksand material has washed or

slipped. That the necessary repairs and renewals, as pointed out by your inspector to the officers in charge of these structures to the trestles, open culverts and cattle passes, be promptly made. That the viaduct at Stony Brook Glen be replaced, or strengthened and repainted. That inside guard rails be maintained on all bridges and trestles. That the remainder of guard rails, frogs and the heels of switches be protected by foot-guards. That targets be put on the stands of derailing switches, where now lacking. That the fences be put in proper repair. Dim crossing signs repainted and cattle guards with proper guard fences be maintained at each boundary of all the highways crossed.

*Rochester, Hornellsville and Lackawanna Railroad.*

The general alignment is good and the only sharp curve, one of 10 degrees, located at Hornellsville Junction. Grades are also light, the maximum being 24 feet per mile. The roadway is well graded and properly drained. The bridges of iron or steel are in good condition, well painted, have good masonry, standard ties and guard timbers in good repair. Inside guard rails are not maintained. The only timber structures remaining in the roadway are short spans of open culverts in good condition, and have standard ties and guard timbers. The box culverts and iron pipe drains are in proper condition. The cross-ties are the same kind and dimensions as those used in the main line track and are in the same generally good condition. The entire track is laid with 56-pound steel rail in fair condition. The rails are connected by angle plates 24 inches in length with 4 bolts, all connections are full bolted and bolts tight. The switches are split point, with automatic stands, and have well-painted targets. The frogs are rigid. Only part of the frogs and guard rails are protected by foot-guards. No derailing switches are apparently needed. The track is in very good line and surface and the outer rail on curves correctly elevated. The track is fairly ballasted with gravel much of which has been put in since the last inspection. No railroads, steam or electric, cross at grade. The right of way is clear and clean. Fences are of wire and board and somewhat out of repair. The highway crossings are well graded, properly planked and protected by signs of the diamond form. There are no cattle guards. There are no overhead obstructions. The whistle posts are properly located. There are no mile posts. The track sections are approximately the same length as on the main line and the same force employed on each section. The trains are operated by the telegraphic train order system. The stations are in very fair condition and properly furnished. The same equipment is used as upon the main line, and the same remarks apply. Since the last inspection approximately one-half the cross-ties have been renewed. Nine and two-tenths miles of track have been ballasted with gravel. One light iron bridge of 85 feet span has been replaced with a plate girder bridge, on new masonry. The station building at Burns has been repainted.

*Recommendations.*

That inside guard rails be maintained on the bridges. That frogs, guard rails and heels of switches be protected by foot-guards. That proper repairs be made to fence and that cattle guards, with proper guard fences, be maintained at each boundary of the highways crossed.

*Shawmut Connecting Railroad.*

This piece of railroad has been recently constructed and the work has been well done. The general alignment is good. The maximum curve 4 degrees. The maximum grade is 30 feet per mile. All bridges are of steel and are erected on proper masonry of concrete. They have standard floor systems, all new. Inside guard rails are not maintained. There are no wooden structures in the roadway. Open culverts and cattle passes are of concrete masonry, I-beam stringers and standard ties and guard timbers. The box culverts and iron pipe drains are good. The cross-ties, all yellow pine, are of the same dimensions and the same number laid to the mile

of track as upon the main line. They are all new. The track is laid with new 85-pound steel rail connected by Weber joints 30 inches in length, with 6 bolts. All connections are fully bolted, and bolts tight. The switches are split point and have automatic stands with well painted targets. The frogs are spring rail. No foot-guards are used. No derailling switches are apparently necessary. The alignment and surfacing of track are first class and the curves correctly elevated. The track is very well ballasted with gravel. The right of way is clear and clean and well fenced with wire. Highway crossings are in proper condition and protected by signs of the "X" form. Wooden slat cattle guards with suitable guard fences are in place at each boundary of all the highways crossed. There are no overhead obstructions. Mile posts are not maintained. Whistle posts are correctly located. This short line of track is maintained as a portion of a main line section. There are no station buildings and only telegraph stations maintained.

#### *Recommendations.*

That inside guard rails be placed upon the bridge, and that the frogs, guard rails and heels of switches be protected by foot-guards.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with. (No. 42—1905.)

#### RUTLAND RAILROAD.

Inspected July 25, 26 and August 17, 1905.)

On July 25 and 26 and August 17, 1905, I inspected the portions of the Rutland railroad in this State, and respectfully submit the following report:

#### *Chatham Division.*

The Chatham division of the Rutland railroad, a single track line, connects with the Boston and Albany railroad at Chatham, and extends to Bennington, Vermont, 57.3 miles, of which 51.56 miles are in the State of New York. There are also in this State approximately 6 miles of sidings and yard tracks.

The general alignment of the road is good and most curves light; the maximum, aside from one of 9 degrees at Chatham station, is 5 degrees. The grades are fairly regular and generally light; the maximum grade north-bound is 69 feet per mile, for about 1½ miles, near Old Chatham,—south-bound, 65.6 feet per mile for about 3.1 miles, near Center Berlin. The roadway is generally well graded and fairly drained; a few rock cuts near the southerly end of the road are somewhat narrow to admit of ditches of standard width and depth. No subdrains are used.

The steel and iron bridges are in good condition excepting that most of them should be repainted to prevent injury from rust; they are erected on fair to good masonry and have standard floor systems, in proper repair. Inside guard rails are not maintained. The light iron bridges mentioned in the report of last inspection (which was made in July, 1903), with the exception of one at Chatham, have been replaced with modern bridges of standard design and suitable strength; the one at Chatham, while of light construction, is sufficient for the class of motive power and rolling stock used on that division. There are no wooden bridges in the roadway. Overhead highway and farm crossing bridges of wood are in fair to good condition. The trestles, of which there are several and some used for crossing running streams, are of standard construction, generally in fair repair, and arrangements are made for making necessary repairs to the remaining ones. Nearly all open culverts and cattle passes are constructed entirely of wood; a few have masonry of a poorer class, to which some repairs and renewals are needed. Nearly all stringers are of timber; a few are composed of rails. The ties and guard timbers are standard and repairs are being made as



necessary. The arch and box culverts and iron pipe drains are in from fair to good condition.

The cross-ties—mixed cedar, Southern pine, chestnut and oak—are of standard dimensions and laid at the rate of 2,992 to the mile of track; they are fairly well spaced and full spiked. There are many decayed ones and about 15 per cent. should be renewed this season.

The track is laid with 60-pound steel rail, connected generally by angle plates—there are some fish plates still in use; their length is 24 inches and they have 4 bolts. The rail is very much worn and bent; practically all of it should be renewed. The angle plates are full bolted but a considerable portion of the bolts are loose and, owing to the worn condition of the rail and fastenings, cannot well be kept tight. All main track switches are split point, and most switch stands are automatic. The switch stands are in fair condition. No switch lamps are used and night trains are not operated. The frogs are rigid, and all frogs and guard rails are protected by foot-guards. Derailing switches are in all sidings where their use is necessary; some of the stands, however, are devoid of targets. The alignment and surfacing of track are poor and the curves irregular. The track is lightly ballasted with a poor quality of gravel, and much of it practically without ballast. A gravel pit has been recently opened, a steam shovel working in it, and trains distributing new ballast. About one mile of the new ballast has been already put under the track. This ballast is of an inferior quality and will not assist materially; if possible a better quality should be secured.

Two tracks of the Fitchburg division of the Boston and Maine railroad are crossed at grade at Petersburg Junction; the crossing is protected by an interlocking plant with derailing switches in all tracks approaching, and with home and distant signals; the distant signals on the Rutland railroad, however, are not connected up,—therefore all trains on that road are required to come to a full stop before crossing.

The right of way is free from trees, but there is much small brush remaining, and grass and weeds have not been cut this season. The fences are generally of wire much of them in poor repair, and in places lacking. A considerable amount of new fence of wire has been constructed since the last inspection, and repairs made in many places. The highway crossings are properly graded, well planked and protected by signs of the diamond form. All the crossing signs are new. A few wooden slat cattle guards are in use, but at most crossings there are none. No highway crossings are protected by flagmen, gates or electric bells. Mile and whistle posts are not maintained. All overhead obstructions are protected by warning signals.

The average length of the track sections is  $5\frac{1}{2}$  miles and the force employed upon each consists of a foreman and three to four laborers. Regular track walkers are employed through the winter season, and in the summer time the track is patrolled daily by some member of the section force.

No interlocking plants are maintained excepting the one at the crossing of the Fitchburg division of the Boston and Maine railroad at Petersburg Junction. The movements of train are governed by the telegraphic train order system.

The station buildings are small, some of them old, and generally in fair repair, they are clean; water for drinking is provided, and timetables are posted in the waiting rooms. The station platforms are of plank and gravel. Station employees wear uniforms.

The lighter locomotives and standard rolling stock of the Rutland railroad are used on this division. The locomotives and all passenger cars are equipped with automatic couplers; the freight cars observed were in good repair and about 70 per cent. of them equipped with automatic couplers. All passenger cars have air brakes; the cars are heated by steam and lighted with gas or oil lamps; water for drinking is furnished and emergency tools are carried in each.

Since the last inspection some cross-ties have been renewed; about 6%, miles of iron rail replaced with steel; one mile of track has been reballasted with cinders, and four miles with gravel; bridges Nos. 7, 8, 15 and 38, light iron bridges, have been replaced with new bridges of steel; girder bridge No. 180 has had new cover plates put on; trestle No. 4, about 684 feet in

length, has had new longitudinal bracing and repairs made to bents; repairs have also been made to other trestle structures, open culverts and cattle passes, and the floor of several has been renewed; additional stringers have also been put in on most of them, and additional rails where rails are used for stringers; a new overhead bridge has been built at South Berlin, replacing an old one; the masonry to bridges Nos. 7, 8, 15 and 18 has been extensively repaired; a new station has been built at Petersburg and a new waiting shed at Wyomanock; bridges Nos. 7, 8, 15 and 38 have been repainted; about 15 miles of new wire fence have been erected, and about 5 miles of fence repaired.

#### *Recommendations.*

That inside guard rails be maintained on all bridges and trestles; that approximately 15 per cent. of cross-ties be renewed this season; that practically all the rail and fastenings be renewed; that targets be put on the stands of all derailing switches; that the track be ballasted and put in proper alignment and surface; that the distant signals of the interlocking plant at the crossing of the Boston and Maine railroad at Petersburg Junction be connected up and put in working order—(this interlocking plant is cared for by the Boston and Maine railroad); that brush, grass and weeds on the right of way be cut and removed; that the fences be put in proper repair; that cattle guards with proper guard fences be maintained at each boundary of all the highways crossed; and that whistle posts be erected 80 rods each side of all highway crossings.

#### *Ogdensburg Division (Ogdensburg and Lake Champlain Railway.)*

The portion of the Ogdensburg division (Ogdensburg and Lake Champlain railway) in this State extends from the Vermont State line at Rouses Point to Ogdensburg, a distance of 118.53 miles, single track, and has approximately 39 miles of sidings and yard tracks.

The general alignment is good, the maximum curve 2 degrees and 30 minutes, located at Malone. The grades are also light, the maximum west-bound being 38 feet per mile, and eastbound, 30 feet per mile. The roadway is very well graded and properly drained. No sub-drains have been put in.

The steel and iron bridges are in good condition and generally well painted; they are of standard construction and sufficient strength and have standard floor systems, in good repair. Inside guard rails are not generally maintained. Nearly all bridges are erected on fair to good masonry; a few have abutments of timber, which are in proper condition. There is but one wooden bridge remaining in the roadway;—that is a Howe truss deck span 66 feet in length, between Norwood and Madrid; it has been erected but a few years and is covered; the timber is sound and it is erected on good masonry. The overhead bridges of wood and iron are in fair to good condition. The only trestle structure remaining in the roadway is one of 2,100 feet in length, in the St. Johns river at Rouses Point; it is constructed partially on pile and partially on crib foundations and is in good repair. The Central Vermont railway also operates over this trestle on a gauntleted track. The gauntleted track is protected by signals controlled by an operator located in a tower near the center of the trestle, which crosses the river to the Vermont shore. Nearly all open culverts and cattle passes have masonry abutments, much of which is poor, and some of which needs prompt attention,—which was promised by the officials of the railroad who accompanied your inspector, and whose attention was directed to the different structures requiring attention; a few have abutments constructed of timber, all of which are in fair condition. The openings of the longer spans have I-beam stringers and of the shorter ones timber stringers; all are sufficient. The ties and guard timbers are standard and in good repair. The arch and box culverts and iron pipe drains are in from fair to good condition and necessary repairs are now in progress.

The cross-ties are of mixed yellow pine, cedar, tamarack, Princess pine, and a few hemlock; their dimensions are 6x8 inches, 8 feet in length, and they are laid at the rate of 2,992 to the mile of track. They are generally

in good condition; necessary renewals have been or are being made, and are evenly spaced and full spiked.

Approximately 90 miles of the main track are laid with 80-pound, 10 miles with 75-pound, and the remainder with 72-pound steel rail. The 80-pound rails are connected by angle plates 30 and 36 inches in length with 6 bolts, the 75-pound by angle plates 22 and 24 inches in length with 4 bolts, and 30 inches in length with six bolts, and the 72-pound rails by angle plates 20 inches in length with 4 bolts. The rail is in very good condition, all the connections full bolted and bolts tight. The main track switches are split point; switch stands automatic, and have well-painted targets. Switch lamps show red light for danger and white for safety. Main track frogs are spring rail, and all frogs and guard rails are protected by foot-guards. Derailing switches are in sidings where their use is necessary, and have proper targets. The alignment and surfacing of the track are good and the outer rail on curves properly elevated for the speed at which trains are scheduled. The track is ballasted with gravel and cinders; on the easterly end of the road the ballast is in good quantity and quality,—on the westerly portion the ballast is lighter and not of so good quality and some additional ballasting would improve the road.

The following named railroads are crossed at grade: One track of The Delaware and Hudson Company's railroad at Rouses Point and one track at Mooers Junction. One track of the Mohawk and Malone railway at Malone Junction. One track of the New York and Ottawa railroad at Moira. One track of the Rome, Watertown and Ogdensburg division of the N. Y. C. & N. H. R. R. at Norwood. A tilting-board signal is used to protect the crossing at Norwood, and at all the other crossings a ball signal. All trains are required to come to a full stop at each of the crossings.

The right of way is free from trees, brush and rubbish, and grass and weeds are being cut. The fences are of wire, board and rail, and some repairs are needed. The highway crossings are in proper condition and protected by signs of the finger-board and diamond form. Wooden slat cattle guards with proper guard fences are maintained at each boundary of all the highways crossed. Three crossings are protected by flagmen and 111 highway crossings by crossing signs only. Mile posts are maintained and the whistle posts are properly located.

The track sections are 5¼ miles in length, and the force employed upon each consists of a foreman and from three to four laborers. Each gang is furnished with proper appliances for protecting its work. Regular track walkers are employed through the winter season and in the summer time the track is regularly patrolled. All overhead obstructions are protected by warning signals. No interlocking plants are maintained. Trains are operated by the telegraphic train order system and are spaced at stations.

The station buildings are generally in good condition clean and neat and properly furnished. Station employees wear uniforms.

The standard freight and passenger equipment of the Rutland railroad is used on this line, for remarks concerning which see report on the Chatham division.

Since the last inspection (July, 1903) about 20 per cent. of the cross-ties have been renewed; about 6½ miles of 80-pound, and 4 miles of 72-pound steel rail have been put in, replacing worn 56-pound rail; 4 miles of track have been reballasted with cinders and gravel; necessary repairs and renewals have been made to bridge, trestle, open culvert and cattle pass floors; a new pier has been built under bridge No. 68 and considerable repairs done to other masonry; the station buildings at Ogdensburg and Chateaugay have been quite extensively repaired, also freight houses at Ogdensburg and engine house at Norwood extended; about 6 miles of new wire fence have been erected, and 3 miles of fence repaired.

#### *Recommendations.*

That necessary repairs and renewals be made to the open culvert and cattle pass masonry; that inside guard rails be maintained on all the bridges and trestles, and that necessary repairs be made to fences.

*Addison Railroad.*

The Addison railroad connects with The Delaware and Hudson Company's railroad at Addison Junction, and extends to Leicester Junction, Vermont. Only .085 of a mile of this road is in the State of New York, and it is used principally for freight service and the traffic over it is very light.

It is fairly graded and the drainage good. The only structure open to grade in this State is a short piece of framed bent trestle on pile foundations, reaching to the State line in Lake Champlain. The piles and bents are of standard construction and in good condition. The ties and stringers were being renewed when the inspection was made. Most of the trestle that was in the State of New York, formerly existing at this place, has been filled or nearly filled with stone; on this filled portion, for part of the distance the ties still rest upon the stringers. Some of those stringers are getting poor and should be renewed, or the trestle completely filled and the stringers removed. The only other opening observed was a stone box culvert, in proper condition.

The cross-ties are principally cedar, and laid at the rate of about 2,640 to the mile; they are in fair condition, properly spaced and full spiked.

The track is laid with steel rail apparently weighing about 60-pounds to the yard. The rail is in fair condition for the light traffic and connected by fish plates 19 inches in length with four bolts. Stub switches are used, with rigid stands. The frogs are rigid and are properly protected by foot-guards. The alignment and surfacing of the track are poor; ballast, gravel, in very small quantity.

The right of way is free from trees and brush, and fairly fenced with board and wire. There are no highway crossings and no stations owned by the company in this State.

*Recommendations.*

That the stub switches be replaced with split point switches and that the track be put in proper alignment and surface.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the "recommendations will have consideration in the work contemplated in the ensuing year." (No. 24—1905.)

## SCHOHARIE VALLEY RAILWAY.

(Inspected May 29, 1905.)

On May 29, 1905, I made an inspection of the Schoharie Valley railway, and respectfully submit the following report:

The Schoharie Valley railway—4.38 miles in length—is a single track road connecting with the main line of The Delaware and Hudson Company's railroad at Schoharie Junction and extending to Schonarie, at which point the Middleburgh and Schoharie road begins, and which is operated jointly with the Schoharie Valley railway, the same train operating over both roads.

The grades and curves are light. The grading of the roadway has been somewhat improved and ditches cleaned since the last inspection, which was made in July, 1903. Additional widening of cuts and embankments, however, is necessary in places, and some ditches are still blocked with material washed in from the slope.

There are two deck plate girder iron bridges. The first, near Schoharie, is 18 feet in length and light 16-inch girder. The original clear span of this opening was about 10 feet. The masonry, however, which was built dry, was practically washed out during a recent freshet, and the girders are now supported on temporary blocking which is insecure and settles as the train passes over, causing the girders to be overstrained. The attention of the superintendent of the road, who accompanied your inspector, was directed to this as well as all other defects mentioned in this report and assurance

given that prompt and proper attention would be given. This bridge should have proper masonry constructed at once, and in the meantime the present temporary blocking be made secure. The other plate girder bridge is of 27 feet span, and while the girders are light they are sufficient for the light motive power and rolling stock used. The masonry to this as well as to all of the other openings in the roadway is of a small class of stone mainly laid dry, and while this particular one is now in fair condition, such structures need constant watching and frequent repairs. The ties on the iron bridges are in fair condition; plank, spiked to the ties, is used, however, in place of guard timbers. Regular guard timbers should be maintained. There is one span of a wooden Howe truss bridge that has been in the roadway about forty years; its length is 100 feet. The timber to this bridge, for all its years, is sound, and the trusses are of sufficient strength. The floor system, however, is defective. The floor beams rest directly on the bottom chord, are 7x14 inches, placed about 27 inches center to center, and the length between bearings approximately 18 feet. On the top of the floor beams a stringer about 6x12 inches is laid, and the rail rests directly upon the stringer. The floor beams are very much overstrained and their number should be increased 50 per cent.; or, in other words, there should be two additional floor beams in each panel where there are now four, making six to the panel. In addition to this the stringers should be increased so as to better distribute the weight; they should be made of two 6x12 timbers under each rail, placed on edge and securely bolted together, and should be laid with broken joints. Besides this there should be regular cross-ties on top of the stringer, but it is doubtful if there is headroom sufficient to do this; however, as the line is straight and grade level, if the two sets of stringers are properly secured there would be practically no danger except from a derailed truck, if ties are omitted. The attention of the company has been specially directed to the necessities of this bridge by your inspector. There are no timber trestles. There is but one open culvert; this is of about 8 feet span and about 3 feet in height. One abutment has been partially washed out and replaced by timber blocking not securely put in. The masonry should be promptly rebuilt, and in the meantime the blocking made secure. There are no arch culverts. The box culverts and pipe drains are in fair condition.

The cross-ties—6 to 8-inch face, 6 inches in thickness, 8 feet in length, of mixed timber, laid at the rate of 2,640 to the mile of track—are in very good condition; at least 30 per cent. of them have been renewed since the last inspection. The condition of the rail is also improved, about two miles of new 60-pound steel rail having been put in, replacing the older, worn rail. There still remains in the track some rail much worn, and additional new rail is needed. The condition of the rail connections is also improved, there being very few missing bolts and not nearly as many loose ones as formerly. Split point and stub switches are both in use; the number of stub switches, however, has been reduced, split point switches having been put in their place. Switch stands are rigid, and some lack targets. Switch lamps are not used as night trains are not operated. The frogs are rigid, and no frogs, guard rails or heels of switches are protected by foot-guards. No derailling switches are required. About one-third of the track has been recently reballasted with a medium quantity of broken stone, and additional broken stone ballast is now being put in; the remaining portion of the track is very lightly ballasted with sand. Considerable of the track has little or no ballast, and grass and weeds grow plentifully between the ties. The alignment and surfacing of the track are very much improved, and while not good yet are fair, considering the slow speed of trains.

The right of way is generally narrow, and while for most of the distance it is clean, some small brush was observed, which should be cut and removed. The fences are of wire and very much out of repair. The highway crossings are in fair condition. At one of them, which is extensively used, there is no crossing sign. This, however, is claimed to be a private crossing, but if its use is to be continued by the general public it should be protected by a crossing sign. No cattle guards are maintained. Mile and whistle posts are not maintained. There is one low overhead bridge and at it there are no warning signals.

The track force consists of a foreman and five laborers.

The only station owned by the company, aside from a small frame building at the junction with the D. & H., is at Schoharie; it is a brick building, in very good condition and properly furnished.

The road owns one small locomotive; it is in good repair, has automatic couplers and air brakes. The road also owns one combination car; this also has automatic couplers and air brakes; it is heated by a stove and has oil lamps; emergency tools are properly located in the center of the car. This locomotive and car operate over both the Schoharie Valley and the Middleburgh and Schoharie railroads. The company owns no other rolling stock.

#### *Recommendations.*

That the necessary widening of cuts and embankments be done and the remaining ditches cleaned; that masonry be at once constructed to the 18-foot deck plate girder bridge and that the span of the bridge be not more than 10 feet if present girders are to be used; that proper guard timbers be placed on bridges and open culverts, and inside guard rails laid; that the additional renewals and repairs to masonry above mentioned in this report be made promptly; that the additional floor timbers and increased stringers be promptly put in the Howe truss bridge, and that until this is done trains operate over the bridge with caution; that the worn rail be replaced, missing track bolts supplied and loose ones tightened; that the stub switches be replaced with split point switches and that all switch stands be supplied with targets; that the frogs, guard rails and the heels of switches be protected by foot-guards; that additional ballasting be done; that the brush on the right of be cut and removed; that the fences be put in proper repair; that cattle guards be put in at each boundary of the high-ways crossed; and that the low overhead bridge be protected by warning signals.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the work recommended had already commenced and would be finished as soon as possible. (No. 3—1905.)

Subsequently an inspector made the following report:

ALBANY, N. Y., Nov. 8, 1905.

*To the Board of Railroad Commissioners:*

Gentlemen.—As requested by your Board I made an inspection of the Schoharie Valley railway in order to ascertain whether or not the recommendations made by Inspector Shultz in a report dated June 6, and which later were adopted by your Board, had been carried out; the inspection was made on October 27th.

Except in a few instances, the recommendations seem to have been ignored, and the road, as far as safety of operation is concerned is in worse condition than it was when the regular inspection was made last spring.

The separate recommendations and the work done in each case will appear from the following:

1. That the necessary widening of cuts and embankments be done and the remaining ditches cleaned.

No cuts or embankments have been widened. At a few points ditches have been cleaned, but when they were cleaned the slopes were not dressed to a proper angle, so that in but a short time the ditches will probably be again filled.

2. That the masonry be at once constructed to the 18-foot deck plate girder and that the span of the bridge be not more than 10 feet if the present girders are to be used.

Nothing whatever has been done at this point. The bridge is too light for the loading, and hence is dangerous. This is bridge No. 6, referred to below.

3. That proper guard timbers be placed on bridges and open culverts, and inside guard rails laid.

Nothing whatever in this line has been done.

4. That additional renewals and repairs to masonry \* \* \* be made promptly.

No masonry of any kind appears to have been laid, nor have any repairs to masonry been made.

5. That additional floor timbers and increased stringers be promptly put in the Howe truss bridge, etc.

Timbers 4x14 and 3x13 have been spiked to the old ties; in most cases daylight can be seen between the old tie and the timber spiked to it; in many cases the longitudinal stringers to which the rails are spiked have no bearing on this new timber, and in other cases the new timber has no bearing on the chords. As a result the new timber does but very little good and does not comply with the spirit of the recommendation. The job is a slovenly one. The old stringer which it was recommended should be replaced with a new one, is still in place.

6. That missing track bolts be supplied and loose one tightened.

Some bolts are missing but not many. Most of them are tight; there seems to be more loose bolts in the mile on the westerly end than on the balance of the road.

7. That the stub switches be replaced with split point switches and that all switch stands be supplied with targets.

There is one stub switch left at Schoharie Junction. All switch stands except two are without targets.

8. That additional ballasting be done.

Some additional ballasting has been done.

9. That the brush on the right of way be cut and removed.

This has not been done.

10. That the fences be put in proper repair.

This has not been done.

11. That cattle guards be put in at each boundary of the highways crossed.

This has not been done.

12. That the low overhead bridge be protected by warning signals.

This has not been done.

The roadway has been somewhat improved in alignment and surface, though not much work appears to have been done on the western end. There are no highway crossing signs at the two highway crossings.

Beginning at the easterly or Schoharie Junction end, the first structure as one proceeds west is a short timber span. While not dangerous now, it is liable to become so during a heavy rain, and for that reason is not a fit structure.

#### *Bridge No. 2.*

Deck plate girder span about 30 feet, masonry laid dry and not in very good condition now. The bridge appears to be light.

#### *Bridge No. 3.*

Howe truss, 100-ft. span; the reenforcement recommended for its floor and the supposed compliance with the recommendation have been referred to above.

#### *Bridge No. 4.*

A timber bridge, supported by cob house abutments and cob house pier. Placing of stringers on the supports unintelligently and poorly done. In some places the stringers have a bearing of but a few inches. The stringers should be rearranged so as to have proper bearing at all points.

#### *Bridge No. 5.*

A metal span, about 16 feet long. The westerly masonry abutment has bulged to such an extent that it is liable to fall at any time. I consider this about the most dangerous point on the road.

*Bridge No. 6.*

Referred to in report above. Recommendations as to shortening of span, etc., not complied with.

A copy of the re-inspection report was sent to the company and the following reply was received:

SCHOHARIE, N. Y., Nov. 20, 1905.

*Board of R. R. Commissioners, State of New York, Albany, N. Y.*

J. S. KENNEDY, Sec'y.:

DEAR SIR.—In reply to yours of 17th inst. Mr. Vroman requested me to state that he had intended to have complied in most instances to the recommendations made by your inspector, Mr. Shultz, especially the more important ones, but if in the opinion of your engineer, who so recently made inspection, they have not been he would do what he could as soon as possible to comply to these recommendations, and especially to bridge you designated as No. 5, which will be relaid at once. In regard to the repairs to the Howe truss bridge which did meet the good opinion of your engineer, might say that the 3x13 timbers were put in the bridge before any recommendations from your Board and probably did not do so much good as those put in very lately, which were 4x14 and has full bearing on the chords and give full support to the stringers. It was the 4x14 timbers that Mr. Shultz recommended to be put in equally between the old timbers, but instead they were put against them and partially spiked. It would seem to me that if they were not spiked at all the support to these stringers would be there just the same and would be additional support, which was the intent of the repairs. I can further say that the matter will be given Mr. Vroman's personal attention. Yours truly,

A. H. WOOD.

An inspector will make another report in this matter. (No. 3—1905.)

*SEA CLIFF INCLINED CABLE RAILWAY.*

The last inspection report of this railway will be found at p. 483, 1st vol. 1904 report of this Board. This railway was not operated during 1905. There will be no further comment on it in these reports unless its operation is resumed.

*STATEN ISLAND RAPID TRANSIT RAILWAY AND STATEN ISLAND RAILWAY.*

(Inspected May 22, 1905.)

On May 22, 1905, I made an inspection of the State Island Rapid Transit railway and the Staten Island railway, which latter road is operated by the Staten Island Rapid Transit Company, and respectfully submit the following report:

The Staten Island Rapid Transit railway extends from South Beach to Arthur Kill bridge; the length of the line is 10.874 miles, and it has 8.816 miles of second main track and 21.524 miles of sidings and yard tracks. The Staten Island railway connects with the Staten Island Rapid Transit railway at Clifton Junction and extends to Tottenville; the length of the line is 12.652 miles, and it has 9.994 miles of second main track and 2.309 miles of sidings and yard tracks.

The Staten Island Rapid Transit railway has 6 miles of main track laid with 85-pound, 0.4 of a mile with 75-pound, and the remainder, 13.748 miles, with 67-pound steel rail. The Staten Island railway has 4.08 miles laid with 75-pound, 18.56 miles with 67, 60 and 56-pound steel rail interspersed, but mainly 67-pound rail. The sidings and yard tracks are laid with various weights of rail, mainly of the lighter class. The heavier rails are connected by angle plates 30 inches in length with six bolts, and the lighter rails by angle plates 20 and 24 inches in length with four bolts,



The cross-ties—all yellow pine in main track—are 7x9 inches, 8 feet 6 inches in length and laid at the rate of 2,640 to the mile of track.

The roadway is very well graded and properly drained; one cut, however, near Arrochar, through material of a clayey nature, has rather steep slopes, and in times of storm the material washes down, filling the ditches. This cut should be resloped and widened.

There is an artificial tunnel with stone bench walls and brick arch, about 800 feet in length, near St. George; it is in first-class condition throughout.

The steel and iron bridges are in good condition and fairly well painted. Inside guard rails are not generally maintained. Draw-bridges are protected by distant signals interlocked. The timber trestles are of proper construction and in good repair. Quite an amount of trestle has been filled since the last inspection (May, 1903), and arrangements are made for filling others, work on which is now in progress. The open culverts and cattle passes, arch and box culverts and iron pipe drains are properly maintained.

Extensive renewal of cross-ties has been made, and the general condition of the ties is good. The heavy rail is in first-class condition; some of the lighter rail is considerably worn, and a large quantity of rail is now being received with which to replace the worn rail. The connections are full bolted and with the exception of a few in those of the lighter rails all bolts are tight. All switches with the exception of two Wharton, are split point. Rigid and automatic stands are both in use, and all except a portion of the trailing switches in the double track have targets. Switch and signal lamps show red light for danger and white for safety. Rigid and spring rail frogs are both used. Some of the foot-guards in frogs, switches and guard rails are lacking. Derailing switches are in the sidings where their use appears necessary. The track is ballasted in from light to fair quantity with sand and cinders. Considerable new ballasting has been done, and more ballast is being distributed. The alignment and surfacing of the track are very fair for this season of the year and are apparently being rapidly improved. The track sections each cover approximately five miles of road, and the force employed on each section consists of a foreman and six laborers. Each gang is furnished with flags, lanterns and torpedoes. All portions of the road are patrolled daily by some member of the section force. The grades and curves are generally light.

The State Island Rapid Transit railway is equipped with electric automatic block signals; the movement of trains on the Staten Island railway is governed by telegraphic train orders. Interlocking plants are maintained at Clifton Junction governing connections with the Staten Island railway, also a crossing of the Richmond Light and Railroad Company's electric railroad. An interlocking plant is maintained at St. George, governing movements of trains in terminal yard; an interlocking plant at Port Richmond, governing crossover in main tracks, switch leading to ship yard, and crossing of the Richmond Light and Railroad Company's electric railroad. The double track junctions, are governed by switches interlocked with signals.

Double track lines of electric railway cross at Port Richmond, Richmond Furnace, Clifton and Grant City. The crossings at Clifton and Port Richmond are governed by interlocking plants; at the other two crossings the conductors of the electric railroad are required to pilot their cars across the tracks of the steam railroad.

The right of way is cleared and fairly clean. The fences are of wire, generally in poor repair and considerably lacking. The highway crossings are suitably graded, and protected by proper crossing signs. Wooden and metallic slat cattle guards are both in use; some are lacking and many others in poor repair. Whistle posts are properly maintained. Mile posts are not maintained, but distances are marked on nearest telegraph pole. Ten highway crossings are protected by flagmen and gates, 31 by electric bells, and the remaining 30 by crossing signs only.

The station buildings are in good condition, necessary repairs having been made; they are clean and neat and properly furnished.

The passenger equipment has automatic couplers and vacuum brakes. The cars are heated by steam and lighted with oil lamps. Emergency tools are properly located in the cars. The freight equipment is also in good condition; all have automatic couplers and air brakes. Many of the locomotives used in freight service are of the kind where the engineman's and fireman's cabs are separate and no mechanical devices are on them by means of which the engineman and fireman can communicate with each other. Flags lanterns and torpendoes are carried on trains.

The principal repairs and improvements noted as made since the last inspection are as follows: About 20 per cent. of the cross-ties have been renewed; about six miles of new 85-pound steel rail have been laid, replacing worn 67-pound rail; 4 miles of 75-pound rail have been laid, replacing worn 56 and 60-pound rail, and 1,200 tons of new 85-pound steel rail are now being received with which to replace other worn rail; about 16 miles of main track have been ballasted with cinders; a new station building of concrete has been erected at Clifton; the draw-bridges at Arthur Kill and Port Richmond have been repainted; a new steel turntable has been erected at Tottenville, replacing one that had failed; approximately half a mile of timber trestle has been replaced with solid filling; a new coaling plant has been erected at St. George; the St. George yard has been about doubled in size and lesser additions made to other yards; and the automatic electrical signals have been extended over the Staten Island Rapid Transit railway.

#### *Recommendations.*

That the cut at Arrochar be widened and resloped; that inside guard rails be maintained on all bridges and trestles; that missing foot-guards in frogs, guard rails and switches be supplied; that the fences be put in proper repair; that missing cattle guards be supplied and poor ones repaired or replaced; that the locomotives on which the engineman's and fireman's cabs are separate be equipped with some device by which the engineman and fireman can readily communicate with each other, and an emergency valve located so that the fireman may apply the brakes in case of necessity.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with. (No. 5—1905.)

#### ULSTER AND DELAWARE RAILROAD.

(Inspected June 26 and 27, 1905.)

On June 26 and 27, 1905, I inspected the Ulster and Delaware railroad, and respectfully submit the following report:

The Ulster and Delaware Railroad Company owns and operates the following lines of single track, standard gauge railroad: Maine line, from Kingston Point, on the Hudson, to Oneonta, on the line of The Delaware and Hudson Company's railroad a distance of 107.26 miles, and having 23.44 miles of sidings, yard tracks, etc.; Stony Clove and Kaaterskill branch, connecting with the main line at Phoenicia and extending to Kaaterskill, a distance of 19.04 miles, and having 2.12 miles of sidings, yard tracks, etc.; Hunter branch connecting with the Stony Clove and Kaaterskill branch at Kaaterskill Junction and extending to Hunter, 2.6 miles, and having 0.63 miles of sidings, yard tracks, etc.

Both main line and branches are constructed through a mountainous country and have steep grades and sharp curves. The maximum grade of the main line is 153 feet per mile, for a distance of about 3,600 feet east of Grand Hotel station; the maximum grade of the Stony Clove and Kaaterskill branch is 187.44 feet per mile, for a distance of about 3,100 feet in the vicinity of Lanesville; and of the Hunter branch 184.8 feet per mile, for a distance of 2,200 feet near Kaaterskill Junction. The maximum

curve of the main line is 12 degrees, located east of Grand Hotel station; of the Stony Clove and Kaaterskill branch, 12 degrees, between Lanesville and Edgewood; of the Hunter branch, 10 degrees, near Kaaterskill Junction.

The roadway is well graded and thoroughly drained.

All bridges in the roadway are steel or iron, in good condition excepting that many of them would be benefited by an additional coat of paint to prevent rust forming; they are of standard construction and of sufficient strength; all have standard floor systems, well maintained. Inside guard rails have been put on a few of the longer through bridges and bridges on curves since the last inspection was made (July, 1903). Overhead highway bridges are principally constructed of wood and are in good repair. The only trestle structures are on the portion of the road built four or five years ago between Bloomville and Oneonta; these are pile structures of standard construction. They are as yet in fair condition; the long one, however, at the approach to the bridge over the Susquehanna river near Oneonta, is beginning to show evidence of decay and arrangements are already made for filling a portion of it and replacing the balance with a steel bridge. Arrangements are also made for filling others as rapidly as they reach the point where it is necessary to renew or replace. The open culverts and cattle passes on all excepting the Hunter branch have I-beam stringers or girders; on the Hunter branch timber stringers are used. All are of sufficient strength and in good condition. The masonry to the bridges, open culverts, cattle passes, arch and box culverts, is generally in good condition and repairs made as necessary. Iron pipe drains are used in many places and are in proper condition.

The cross-ties—about 95 per cent. yellow pine and the remainder mixed oak and chestnut—are 6x9 inches and 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; they are evenly spaced, full spiked, and in good condition, necessary renewals having been made. Thirty-six and ninety-four one-hundredths of the main track of the main line are laid with 90-pound, 7.97 miles with 70-pound, and the remainder, 60.35 miles, with 62-pound steel rail; the Stony Clove and Kaaterskill branch is laid entirely with 90-pound steel rail; the Hunter branch with 62-pound steel rail. The 90-pound rails are connected by angle plates 30 inches in length with six bolts, the 70-pound rails by angle plates 24 inches in length with four bolts, and the 62-pound rails by angle plates 22 inches in length with four bolts. The 90-pound rail is in first-class condition; the 70-pound and the 62-pound rail is somewhat worn and extensive renewal is to be made. All the connections are full bolted, and practically no loose bolts were observed. All main track switches are split point, in good condition, and have automatic stands with proper targets. Switch and semaphore lamps show red light for danger and white for safety. Most main track frogs are rigid, and all frogs, guard rails and heels of switches are protected by foot-guards. Derailing switches are in all sidings where their use appears necessary; a few of them are devoid of targets. The alignment and surfacing of track are first-class and the curves are properly elevated. The easterly end of the main line is well ballasted with gravel; on the westerly end the ballast is light. The Stony Clove and Kaaterskill branch is well ballasted with gravel, and the Hunter branch lightly ballasted with gravel.

A single track of the Kingston Consolidated Railroad Company's electric railroad crosses at grade on Strand street, lower Hasbrouck avenue, upper Hasbrouck avenue and Prince street in Kingston; at each of these crossings the railroad company maintains a flagman for the protection of the public. Three tracks of the West Shore railroad cross at grade in Kingston; the crossing is protected by interlocking switches and signals, operated from a tower. One track of the Cooperstown and Charlotte Valley railroad (operated by The Delaware and Hudson Company) crosses at grade at West Davenport; the movement of trains over the crossing is governed by flags,—a white flag being displayed on the line of the Ulster and Delaware railroad and red flag on the line of the other road. The position of the flags is reversed by the station agent whenever trains of the Cooperstown and Charlotte Valley railroad desire to cross. All trains of both railroads are required to come to a full stop.

The right of way is free from trees, and the only brush remaining is where left to protect slopes. The fences are of wire and generally in good repair. The highway crossings are well graded, properly planked, and protected by signs of triangular form properly located; some were noted as being dim, and should be repainted. Wooden slat cattle guards with proper guard fences are maintained at each boundary of all the highways crossed. Eleven highway crossings of the main line are protected by flagmen, 98 crossings of the main line, 13 of the Stony Clove and Kaaterskill branch, and 2 of the Hunter branch are protected by crossing signs only. Mile posts are maintained and the whistle posts are at the prescribed distance from the highway crossings. All overhead obstructions are protected by warning signals.

The track sections are from four to five miles in length, according to location, and the force employed upon each consists of a foreman and four laborers in the winter season and a foreman and nine laborers in summer. Each section gang is furnished with flags, lanterns and torpedoes for protecting their work. Regular track walkers are not employed, but all portions of the road are patrolled daily by some member of the section force.

The only interlocking plant maintained is at the crossing of the West Shore railroad in Kingston. The movements of trains are governed by the telegraphic train order system, semaphore signals being located at the stations.

The station buildings are in good condition, clean and neat and properly furnished.

The freight and passenger equipment is well maintained. All cars are equipped with automatic couplers and air brakes. The coaches are heated by steam and lighted with oil lamps. Water for drinking is furnished, and emergency tools are properly located in the center of the cars. All station employees and passenger trainmen are uniformed. Since the last inspection there have been added to the equipment 3 locomotives and 3 cabooses.

The principal repairs and improvements noted as made since last inspection are as follows: Approximately 20 per cent. of the cross-ties have been renewed; 90,000 feet of switch timber have been used in repairs; 6.6 miles of new 90-pound rail have been laid, replacing worn 70 and 62-pound rail; about 7,000 rail braces and 7,000 tie-plates have been used; 8 miles of main track have been rebalasted with cinders and gravel; bridge No. 48, east of Arkville, formerly one span of deck plate girder 25 feet in length, and one through span plate girder 82 feet in length, has been replaced with a new steel lattice bridge 105 feet in length; 2 pile trestles at Kingston Point, total length 851 feet, have been filled; new abutments, mainly of concrete, have been constructed to bridges Nos. 24, 48, 58, 90 and 98; necessary repairs have been made to other masonry; a new combination passenger and freight station has been erected at Brown's Station; a new coal pocket at Kingston, and new fireproof roof put on roofs of roundhouse, boiler-room and powerhouse at that place; a new creamery and ice house have been erected at Mickle's Bridge, a new ice house at Davenport Center, and section tool houses at Shokan and Mt. Pleasant; necessary repairs have been made to other buildings and Edgewood station, on the Stony Clove and Kaaterskill branch, repainted; bridges Nos. 57 and 73 have also been repainted and arrangements made for repainting others that need it; necessary repairs and renewals have been made to bridge, trestles, open culvert and cattle pass floors, and inside guard rails laid on bridges Nos. 9, 42, 44, 45, and 105; several culverts have been replaced with iron pipe; improvements have been made to station grounds and station tracks; new sidings or extensions to sidings have been put in at Rondout, Higginsville, Mt. Pleasant Quarry, Phoenicia, Shandaken, Big Indian, Pine Hill, Roxbury, South Gilboa, Hobart, East Meredith and Oneonta, on the main line, and at Lanesville, Kaaterskill Junction, Laurel House and Kaaterskill station, on the Stony Clove and Kaaterskill branch; a highway grade crossing has been eliminated at Gallows Hill, by the construction of a new piece of highway 97 feet long, diverting the travel; and two grade crossings near Big Indian Station, by changing the

highway and diverting the travel; 13½ miles of new woven wire fence have been constructed on the main line, 2¾ miles on the Stony Clove and Kaaterskill branch, and one-third of a mile on the Hunter branch.

*Recommendations.*

That inside guard rails be maintained on all the bridges and trestles; that the stands of derailing switches be provided with targets; that necessary repainting of bridges be done to prevent injury from rust, and that the dim crossing signs be repainted.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendations would be complied with as promptly as possible. (No. 9—1905.)

UNADILLA VALLEY RAILWAY.

(Inspected August 10, 1905.)

On August 10, 1905, I inspected the Unadilla Valley railway, and respectfully submit the following report:

The Unadilla Valley railway connects with the New Berlin branch of the New York, Ontario and Western railway at New Berlin, and extends to Bridgewater, on the Richfield Springs branch of the Delaware, Lackawanna and Western railroad, a distance of 19.14 miles. It is a single track railroad and has approximately two miles of sidings and yard tracks.

The general alignment is good, curves and grades light. The roadway is well graded and properly drained.

There are no bridges, steel or iron, and pile or framed bent trestles are used generally in crossing streams, none of which crossed by the road are large. The trestles are of standard construction and in proper repair. Most open culverts and cattle passes are constructed entirely of wood; a few have masonry abutments. Most masonry is good. Two openings were observed where masonry needs renewing and the superintendent of the road, who accompanied your inspector, advised that the renewal would be promptly made. There are no arch culverts. Stone box culverts and iron pipe drains are in proper condition.

The cross-ties are in good condition; necessary renewals have been or are being made.

Four miles of the track are laid with 70-pound and the balance with 56-pound steel rail, connected by angle plates 24 inches in length with four bolts. The rail is in fair condition, all the connections full bolted and bolts tight. The main track switches are split point. Switch stands are rigid; some switches, however, have spring in head rod, rendering the switch automatic. All switch stands have proper targets. The frogs are rigid. Frogs and guard rails are protected by foot-guards. No sidings were observed upon which cars were left standing, where the grade descends toward the main track. The alignment and surfacing of the track are very good and the outer rail on curves properly elevated for the speed at which trains are scheduled. The track is ballasted with gravel in medium quantity.

The right of way is free from trees, brush and rubbish. Grass and weeds have been cut. Fences are of wire, in proper repair. The highway crossings are well graded, properly planked, and protected by signs of the "X" form, suitably placed and well painted. Wooden slat cattle guards with proper guard fences are maintained at each boundary of all the highways crossed. No highway crossings are protected by flagmen, gates or bells. Mile posts are not maintained. The whistle posts are apparently properly located. There are no overhead obstructions.

The track sections are 6¼ miles in length, and the force employed upon each consists of a foreman and four laborers. Each gang is furnished with the necessary means for protecting their work. All portions of the road are patrolled daily.

There are no interlocking plants. The movements of trains are governed by the telegraphic train order system.

The station buildings while generally old, and some of them in need of painting, are in fair repair, clean and properly furnished.

The motive power and rolling stock are in fair condition. The passenger cars have automatic couplers and air brakes, are heated by steam and lighted with oil lamps; water for drinking is provided, and emergency tools are properly located in the cars. The freight cars have automatic couplers and air brakes and are in fair repair. The passenger trainmen are uniformed.

Since the last inspection (July, 1903), opening No. 1, formerly six spans of pile bents, has been replaced with a single span and filling; Nos. 3, 4, 5, 6 and 7 have had floors entirely renewed; No. 8 has had new guard put on, No. 10, new ties; No. 21, formerly 8 spans of pile trestle, has been replaced with 36-inch iron pipe with masonry ends, and the trestle is being filled; No. 30 has had new ties put on; repairs have been made to other openings and arrangements made for repairing others as needed; inside guard rails have been placed on most of the trestles; renewals have been made to cross-ties, and the alignment and surfacing of track improved; other minor repairs were observed.

#### *Recommendations.*

That necessary renewal of masonry be made as above noted; that a few defective stringers and ties on structures, to which the attention of the superintendent of the railroad was called by your inspector, be promptly replaced, and that inside guard rails be placed on the trestles where now lacking.

A copy of this report was sent to the company with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that it would comply with the recommendations as directed. (No. 28—1905.)

#### UNITED STATES AND CANADA RAILROAD.

(Operated by Grand Trunk Railway Company.)

(Inspected August 15, 1905.)

On August 15, 1905, I inspected the United States and Canada railroad, and respectfully submit the following report:

The United States and Canada railroad connects with the Rome, Watertown and Ogdensburg division of the New York Central and Hudson River railroad at Massena Springs, and extends to the Canada line near Fort Covington, at which point a branch of the Grand Trunk railway commences and extends to Montreal. The length of the United States and Canada road is 22.18 miles, and it has approximately 1.25 miles of sidings and yard tracks.

The general alignment is good and all curves light. The grades are also light, and for much of the distance practically evel. The cuts and embankments are of full width and proper slopes and the roadway is well drained.

The steel and iron bridges are in good condition and fairly well painted; they have standard floor systems, in good repair. Inside guard rails are maintained not only on the iron bridges but on the trestle structures as well. Most of the bridges have good masonry; a few of them are erected on abutments of timber; these abutments, however, are sound and sufficient. There are no wooden bridges in the roadway, and trestle structures are only used crossing small valleys; of these there are five, of from 5 to 8 spans each; they have pile bents with cedar piles, standard caps, stringers, ties and guard timbers, generally in good repair and material is on the ground and arrangements made for renewing all timber needing it. All the open culverts and cattle passes, also the box culverts, are constructed entirely of cedar timber and are in proper repair.

The cross-ties—all cedar—are 6x8 inches, 8 feet in length, and laid at the rate of 2,816 to the mile of track; they are in first-class condition, necessary renewals having been made are well spaced and full spiked.

The track is laid with 56-pound steel rail, connected by fish plates 18 inches in length with four bolts. The rail is laid with square joints, and while not in bad condition, is considerably worn. Second-use 79-pound rail is distributed over the entire road for replacing the rail now in use. All connections are full bolted and bolts generally tight. All main track switches are spit point, mainly with rigid stands; the stands have proper targets, well painted. The frogs are rigid. Frogs and guard rails are protected by foot-guards. Blocks secured to the tops of the rails are used on sidings upon which cars are left standing, in place of derailing switches. The alignment and surfacing of track are good and the outer rail on curves properly elevated. The track is ballasted with gravel in fair quantity.

One track of the New York and Ottawa railroad is crossed at grade at Helena; the crossing is protected by an interlocking plant with home and distant signals on each railroad, and derailing switches in all tracks approaching the crossing.

The right of way is clear and clean. Grass and weeds have been cut. The fences are of wire and in good repair. The highway crossings are properly graded, well planked, and protected by signs of the long board form, the paint on some of which has become dim and which should be promptly repainted. Wooden slat cattle guards with proper guard fences are maintained at each boundary of the highways crossed. Mile posts are maintained, and the whistle posts are properly located. There are no overhead obstructions.

The track sections are approximately 6 miles in length, and the force employed upon each consists of a foreman and three laborers. Each gang is furnished with flags, lanterns and torpedoes for protecting their work. All portions of the road are patrolled daily by some member of the section force.

The only interlocking plant maintained is at the crossing of the New York and Ottawa railroad at Helena. The trains are operated by the telegraphic train order system.

The station buildings are in good condition, clean and properly furnished.

The regular equipment of the Grand Trunk railway is used on this road, and all observed was in good condition. The coaches are supplied with emergency tools, heated by steam and lighted with oil lamps; all have automatic couplers and air brakes, are clean and neat, and water for drinking is provided. Passenger trainmen wear uniform.

#### *Recommendation.*

That dim crossing signs be repainted.

The company was furnished a copy of the report and communicated to the Board that the recommendation would receive due attention. (No. 32—1905.)

# REPORTS ON INSPECTIONS OF STEAM RAILROAD BRIDGES.

## ERIE RAILROAD BRIDGE AT BINGHAMTON.

(December 9 1904. Report by Inspector and Superintendent of the Grade Crossing Bureau.)

As directed by the Board we made an examination of the Erie railroad bridge spanning the Chenango river and the island, at Binghamton, on December 2, 1904, and would respectfully submit the following report:

Crossing the westerly channel are three pin connected, triangular, truss spans, each 118 feet, 4 inches long. Across the island there is a viaduct construction consisting of six riveted triangular truss spans, each 50 feet long; three riveted triangular truss spans, each 30 feet long; and three riveted triangular truss spans, each 27 feet long. Across the easterly channel are two pin connected Pratt truss spans, each 104 feet long. The easterly approach across First street, consists of plate girder spans of viaduct construction. The plate girder spans and the two spans across the easterly channel are of comparatively modern construction and in good condition. The three westerly spans and the viaduct across the island were built in 1882 and are deck structures, with ties resting directly on the top chord. This portion of the bridge was very carefully examined on December 2 and strains have been computed based on a loading of two 100 ton consolidation locomotives, coupled together followed by a uniform live load of 4,500 pounds per lineal foot. These strains are shown on separate sheets of this report hereunto attached. The weights on each of the four axles of the assumed loading is 46,000 pounds; the loading on each axle of the Erie H21 class locomotives is approximately 46,500 pounds,—so that the assumed loading probably corresponds very nearly to actual loads operated.

### Stresses in 118 Foot, 4 Inch Spans.

Dead load assumed at 2,300 pounds per lineal foot of bridge, three trusses each carrying one-third.

Two-thirds live load on each track assumed to be carried by outside trusses.

Ties rest directly on top chord.

Member.	Stress.	Stress due to cross bending.	COMPOSITION.	Sectional area square inch.	Stress per square inch.	Permissible unit stress according to Erie specifications.
v <sup>1</sup> .....	57,836	.....	2-8" [s 36 lb. per yd. ....	7.2	8,005	.....
v.....	79,871	.....	2-8" [s 36 lb. per yd. ....	7.2	11,100	8,889
a.....	322,942	.....	2-12" [s 142 lb. per yd. ....	28.4	11,380	.....
b.....	203,061	.....	2-10" [s 91 lb. per yd. ....	18.2	11,160	7,330
e.....	95,122	.....	2-10" [s 58 lb. per yd. ....	11.6	8,200	.....
1.....	266,243	.....	2 bars. 6x1 $\frac{1}{2}$ .....	16.5 net.	16,130	9,250
2.....	145,726	.....	2 bars. 5x1 $\frac{1}{2}$ stiffened.....	9.56 net.	15,250	8,970
A.....	0	4,100	{ 4 angles 3 $\frac{1}{2}$ x3 $\frac{1}{2}$ x5 $\frac{1}{2}$ ..... 2 web pls. 15x $\frac{3}{4}$ ..... 1 Top pl. 20x $\frac{7}{8}$ .....	41.48	100	.....
B.....	425,116	4,100	Same as A.....	41.48	10,350	8,810
C.....	549,264	1,100	{ 4 angles 3 $\frac{1}{2}$ x3 $\frac{1}{2}$ x $\frac{1}{2}$ ..... 2 Web. Pls. 15x $\frac{3}{4}$ ..... 1 Top Pl. 20x $\frac{7}{8}$ .....	50.85	10,800	8,985
I.....	220,640	.....	2 bars. 5x1 $\frac{1}{2}$ .....	13.13	16,800	9,240
II.....	490,497	.....	4 bars. 6x1 $\frac{1}{2}$ .....	30.0	16,380	9,304
III.....	576,919	.....	6 bars. 6x1.....	36.0	16,020	9,320



*Stresses in 50 Foot Spans.*

Two trusses under each track.

Member.	Stress.	COMPOSITION.	Sectional area.	Stress per square inch.
v <sup>1</sup> .....	23,830	2 angles - 3x2x $\frac{1}{2}$ .....	4.22	5,640
v.....	24,660	2 angles - 3x3x $\frac{1}{2}$ .....	4.22	5,840
a.....	116,900	4 angles - 5x3x3 $\frac{1}{2}$ .....	11.44	10,220
b.....	81,596	4 angles - 3x3x $\frac{1}{2}$ .....	8.44	9,660
c.....	50,528	4 angles - 3x3x $\frac{1}{2}$ .....	7.08	7,180
1.....	98,738	2 angles - 5x3x $\frac{1}{2}$ and 2 [s - 3x3x $\frac{1}{2}$ .....	8.72 net.	11,320
2.....	65,620	4 angles - 3x3x $\frac{1}{2}$ .....	6.06 net.	10,830
3.....	36,904	4 angles - 3x3x $\frac{1}{2}$ .....	6.06 net.	6,090
A.....	0	2 angles - 4x3x $\frac{1}{2}$ . 1 web pt. 12 $\frac{1}{2}$ x $\frac{1}{2}$ .....	13.55	0
B.....	114,244	Same as A.....	13.55	8,430
C.....	180,236	2 angles - 4x3x $\frac{1}{2}$ ..... 1 web pt. 12 $\frac{1}{2}$ x $\frac{1}{2}$ ..... 1 top plt. 9x $\frac{1}{2}$ .....	19.18	9,390
D.....	198,366	Same as C.....	19.18	10,340
I.....	66,300	2 angles - 4x3x $\frac{1}{2}$ . 1 web pt. 12 $\frac{1}{2}$ x $\frac{1}{2}$ .....	10.81 net.	6,130
II.....	155,513	2 angles - 4x3x $\frac{1}{2}$ ..... 1 web plt. 12 $\frac{1}{2}$ x $\frac{1}{2}$ ..... 1 bot. plt. 9x $\frac{1}{2}$ .....	14.5 net.	10,720
III.....	196,110	Same as II.....	13.79 net.	14,220

*Stresses in 30 Foot Spans.*

Two trusses under each track.

Member.	Stress.	COMPOSITION.	Sectional area.	Stress per square inch.
v <sup>1</sup> .....	23,737	2 angles - 3x3x $\frac{1}{2}$ .....	4.22	5,620
v.....	24,475	2 angles - 3x3x $\frac{1}{2}$ .....	4.22	5,790
a.....	73,924	2 angles - 5x3x $\frac{1}{2}$ and 2 [s - 3x3x $\frac{1}{2}$ .....	9.94	7,440
b.....	45,581	2 angles - 3x3x $\frac{1}{2}$ .....	4.22	10,800
1.....	57,660	4 angles - 3x3x $\frac{1}{2}$ .....	7.12 net.	8,090
2.....	26,590	2 angles - 3x3x $\frac{1}{2}$ .....	3.56 net.	7,470
A.....	0	2 angles - 3 $\frac{1}{2}$ x3 $\frac{1}{2}$ x $\frac{1}{2}$ and 1 web plt. 12 $\frac{1}{2}$ x $\frac{1}{2}$ .....	10.07	0
B.....	63,398	Same as A.....	10.07	6,290
C.....	82,888	Same as A.....	10.07	8,230
I.....	38,810	Same as A.....	9.88 net.	3,930
II.....	77,763	Same as A.....	9.88 net.	7,870

*Physical Condition of 118 Foot 4 Inch Spans.*

The physical condition of the 118 foot, 4 inch spans is not satisfactory. The deflection under Erie engine Class E1, which weighs 75 tons, followed by a train of passenger cars was found to be  $1\frac{1}{4}$  inches. At several points movement of pins in the pin holes was noted, showing that either the pins or the eye bar holes or both, have become worn, the movement in one case (as shown by a rusty surface around the nut) is approximately  $\frac{1}{4}$  of an inch. Several of the vertical posts have been reinforced at top or bottom with plates where evidences of failure had probably been detected.

The masonry was also found to be in faulty condition. Several of the pedestal blocks upon which the bridge rests have been cracked and the masonry underneath in some instances is crumbling. The pedestal blocks which have cracked are held together by means of heavy clamps.

It is seen by the strain sheet that members v, b, 1, 2, B, C, I, II and III are very much overstrained. This overstrain amounts in the last three instances to approximately 80 per cent., while in member 1 the overstrain is about 75 per cent.

On account of the great overstrain on members, as disclosed by the strain sheet, and on account of the other defects mentioned above, we do not think that this bridge is a proper one for the loads operated over it.

*Physical Condition of 50 Foot—30 Foot and 27 Foot Spans.*

The stresses in the 27 foot spans were not calculated. These trusses are like the 30 foot spans except that the panel length is 3 feet, 3 inches, instead of 3 feet, 8 inches. The size of the corresponding members are the same in the spans of both lengths, and as the strains in the members of the 27 foot spans are in all cases somewhat less than in the longer spans, it is evident that if the 30 foot spans are of sufficient strength to carry the live load, the 27 foot spans must necessarily be so. All of the spans included under this head were found to be in good physical condition.

It is seen from the strain sheets that in the 50 foot spans two members are overstrained. These are the lower chords III, the strain amounting in this instance to a trifle over 14,000 pounds per square inch. This unit strain can be reduced by the addition of a plate to the flange, thus increasing the sectional area of the member.

In the 30 foot spans none of the members are overstrained.

*Recommendations.*

We, therefore, recommend,

1. That on account of the condition of the 118 foot, 4 inch spans no "double headers" be operated over the bridge.
2. That the speed of trains, in order to avoid impact stresses as much as possible, be restricted to fifteen miles per hour over those spans.
3. That the existing 118 foot, 4 inch spans be replaced by new structures as promptly as possible, and the masonry rebuilt or properly repaired.
4. That in the 50 foot spans, in the center panels of the lower chord, the sectional area be increased to such an amount as to reduce the unit strain to a proper figure.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board that the recommendation as to rate of speed would be complied with and that, "We are reinforcing the post connections with the cords. I also desire to say that our bridge inspectors are keeping close watch over this bridge, and I do not anticipate any trouble with it." (Case No. 3264.)

*WEST SHORE RAILROAD BRIDGE NEAR KINGSTON.*

(March 27, 1905.)

As directed by your Honorable Board, I made an examination on March 24, 1905, of the West Shore railroad bridge over Rondout creek near Kingston, now in process of renewal, and respectfully submit the following report:

The bridge is a double track structure about 1,200 feet in length and approximately 150 feet in height. The renewal of the steel work was commenced in July, 1904, and stopped about the middle of January, 1905. The reason for stopping at that time was on account of foundations not being completed. Those foundations are now finished and the erection of the steel work is to be continued beginning March 27, and it will probably take about three months to complete the new bridge. The viaduct structure south of the creek and the creek span, approximating in length 660 feet, is finished with the exception of the wooden floor system. The remaining portion, about 540 feet, yet unfinished, has one span on timber bents and over the remaining portion trains are still operating on the old structure. The work is apparently being carefully conducted; the timber bents supporting the track during the renewal are of proper construction and of sufficient strength. While the work of renewal is being done, speed of trains over the structure is restricted to six miles per hour. (Case No. 3314.)

## STREET SURFACE RAILROADS.

(Inspections and reports made by Electrical Expert.)

### BROOKLYN HEIGHTS RAILROAD COMPANY.

(July 16, 1904.)

On July 11th and 12th I made an inspection of the crossings at grade of the tracks of the different companies which are operated by the Brooklyn Heights Railroad Company, by steam railroad tracks, and submit the following:

In this inspection of these crossings your representative was accompanied by J. F. Calderwood, Vice-President and General Manager of the Brooklyn Heights Railroad Company, D. S. Smith, General Superintendent of the Brooklyn Heights Railroad Company, W. O. Wood, Superintendent of the elevated division of the Brooklyn Heights Railroad Company, and C. L. Addison, General Superintendent of Transportation of the Long Island Railroad Company.

A thorough and detailed inspection of each crossing of these companies' tracks at grade by steam road tracks are made, with a view of suggesting what additional protection, if any, was needed at these points to make the crossing as safe as possible for the operation of both steam trains and electric cars. The conclusions arrived at, for the additional protection suggested in this report, were reached by consultation with the above-named representatives of the companies, and, when these suggestions are carried out, it is believed, that these crossings will be as safe as it is possible to make grade crossings of steam and electric road tracks, with the present devices available for crossing purposes.

On Vanderbilt avenue the double tracks of the Nassau Electric Railroad Company cross the double tracks of the Atlantic avenue division of the Long Island railroad. This is a diagonal, cut crossing, with special work in poor condition. An improvement is now in the course of construction on Atlantic avenue which, when completed, will remove the steam tracks from the surface of the avenue. At present this crossing is protected by two flagmen, one on each side of the avenue, at all hours. These men stretch ropes across the street on the approach of a steam train. They are notified of the approach of trains by electric bells, operated from either side of the crossing. Conductors of electric cars flag their cars over the crossing. On account of the contemplated change in the steam tracks no recommendation is made for further protection at this point.

At Kensington Junction the double tracks of the P. P. & C. I. R. R. Co. and the double tracks of the Kensington lines join. This junction is protected by derails and signals on the tracks of both roads. These are interlocked, and all operated from a tower.

At Parkville the double tracks of the P. P. & C. I. R. R. Co. cross the double tracks of the Bay Ridge division of the Long Island railroad. This is a right angle, cut crossing, with special work in good condition. This branch of the Long Island railroad extends from Manhattan Beach Junction to Bay Ridge, a distance of about four miles. At present there is no passenger traffic over it. A freight business is done on this branch, which usually consists of about two round trips per day. Last summer four passenger trains each way per day were operated over this line. At times electric cars pass over this crossing at the rate of six per minute. This crossing is protected by a flagman, on duty at all hours. There are derails in the Long Island tracks on either side of the crossing. These are

not at present operated. This crossing should be protected by derails and signals in the electric tracks, interlocked with derails and signals on the steam road, these arranged so that during the summer season they will be operated by a man located at this point, during the winter season by conductors of electric cars on Long Island trains. Copper troughs should be placed on the trolley wires extending over the crossing.

On West Eighth street, Coney Island, the double tracks of the Nassau Electric Railroad Company cross the single track of the P. P. & C. I. R. R. Co. This is a right angle, cut crossing, with special work in fair condition. The Long Island Railroad Company do switching over the track of the P. P. & C. I. R. R. Co. This is done by a local switching crew twice a day. This crew protect themselves over this crossing. There is no protection at this point, and in consideration of the methods of operation none is recommended.

Near Sixty-second street the double tracks of the Sea Beach and West End lines of the Nassau Electric railroad form a junction on New Utrecht avenue. One hundred feet from the switch point of this junction the double tracks in New Utrecht avenue cross the double tracks of the Bay Ridge division of the Long Island railroad. This is nearly a right angle crossing. It is a special work, cut crossing, in good condition. There are derails and signals in both the steam and electric tracks on either side of the crossing. These are interlocked and operated from a tower located near the junction. In this tower there are 24 levers, 18 of which are used for the junction, and 6 for crossing purposes. Two lines of elevated trains are operated over the electric tracks, one, the West End, run on a minimum of 10 minutes headway; and the other, Sea Beach trains, are operated on a minimum of 5 minutes headway. There is no passenger service operated over the steam tracks. Two freight trains in each direction are run over the crossing daily. A copper trough should be placed on the trolley wires extending over the crossing.

At the intersection of Stillwell avenue and Railroad avenue in Coney Island, the double tracks of the Nassau Electric Railroad Company, through each avenue, make a diagonal crossing. This is a cut crossing, with special work in good condition. The Long Island Railroad Company do switching over this crossing. This is done by local crews twice a day. These crews protect themselves over the crossing. There is no protection at this point, and, in consideration of the amount of traffic over the crossing, and the methods of operation employed, none is suggested.

On Neptune avenue the double tracks of the Coney Island and Gravesend railroad cross the double tracks of the Manhattan Beach division of the Long Island railroad. This is a right angle, cut crossing, with special work in fair condition. Electric cars and steam trains pass over this crossing at times almost continuously. This crossing is protected by derails and signals in the electric tracks, interlocked with signal on the steam road, all operated from a tower. There should be a copper trough placed on the trolley wires extending over this crossing.

On Ocean avenue, the double tracks of the Nassau Electric Railroad Company cross the double tracks of the Manhattan Beach division of the Long Island railroad. This is a right angle, cut crossing, with special work in fair condition. There are 60 regular trains per day operated over the steam tracks, and electric cars are run over it on the minimum interval of two minutes. This crossing is protected by derails and signals in the electric track, interlocked with home and distant signals on the steam road, also by gates, these operated from a tower at all hours. There should be copper troughs placed on the trolley wires extending over the crossing.

On Flatbush avenue, the double tracks of the Brooklyn City railroad cross the double tracks of the Manhattan Beach division of the Long Island railroad. This is a diagonal, cut crossing, with special work in poor condition. This crossing is protected by derails in the electric tracks, interlocked with home signals on the steam road, also by gates, all operated from a tower. There should be copper troughs placed on the trolley wires extending over the crossing, and the special work of the crossing should be renewed.

On Liberty avenue, the double tracks of the Nassau Electric Railroad Company cross two main line and two switch tracks of the Manhattan Beach division of the Long Island railroad. This is a right angle, cut crossing, with special work in poor condition. This crossing is protected by derails and signals in the electric track, interlocked with home signals on the steam railroad, also by gates, all operated from a tower. There should be copper troughs placed on the trolley wires extending over the crossing, and the special work of the crossing should be repaired.

On Rockaway avenue, the double tracks of the Nassau Electric Railroad Company cross the double tracks of the Manhattan Beach division of the Long Island railroad. This is a diagonal, cut crossing, with special work in fair condition. This crossing is protected by derails and signals in the electric tracks, interlocked with home signals on the steam road, also by gates, all operated from a tower. There should be copper troughs placed on the trolley wires extending over the crossing.

On Rockaway avenue, the double tracks of the Nassau Electric Railroad Company cross two main line tracks of the Atlantic avenue division of the Long Island railroad. At present a change of grade of the steam tracks is in course of construction. This crossing is protected by two flagmen, on duty at all hours, who stretch ropes across Rockaway avenue on the approach of steam trains. Conductors of electric cars flag their cars over the crossing. On account of the contemplated change in the steam tracks no further protection is suggested at this crossing.

On Broadway, the double tracks of the Brooklyn, Queens County and Suburban railroad cross two main line tracks of the Manhattan Beach division of the Long Island Railroad. This is a diagonal, cut crossing, with special work in fair condition. The steam track is on a curve and down a  $1\frac{1}{2}$  per cent. grade descending to the east, or toward Manhattan Junction Station. The electric tracks are on a tangent and level on either side of the crossing. The view of the steam tracks from the electric tracks is obstructed in each direction on either side of the crossing. There are 60 regular trains per day operated on the steam tracks, in addition to irregular movements. At times there is almost a continuous movement of electric cars over the crossing. This crossing is protected by derails in the electric tracks, interlocked with home and distant signals on the steam road, on the west side of the crossing, and with home signals on the east side of it, also by gates, all of these operated by a man on the ground at all hours. This crossing is located 250 feet west of Fulton street crossing. The man located at this crossing is notified of the approach of trains from the west by an electric bell, manually operated, from Bushwick avenue, a distance of about 1,500 feet. He is notified of their approach from the east by a bell, operated from Fulton street, a distance of about 250 feet. The home signal on the west side of the crossing is 200 feet, and the distant signal about 1,500 feet from the crossing. The home signal on the east side of the crossing is located 1,000 feet from it, and it also controls the movement of trains over the Fulton street crossing.

On Fulton street, the double tracks of the Brooklyn, Queens County and Suburban railroad cross the double tracks of the Manhattan Beach division of the Long Island railroad. This is a right angle, cut crossing, with special work in poor condition. This crossing is located 750 feet west of Manhattan Crossing Junction Station, at which point all west-bound trains come to a stop. The track between the station and the crossing is on a one per cent. up grade to the crossing. There is the same operation on the steam tracks over this crossing as described over the Broadway crossing, and about the same number of electric cars are run over both crossings. The view of the steam tracks from the electric tracks is obstructed in each direction on either side of the crossing. This crossing is protected by derails in the electric tracks, interlocked with the signals on the steam road which protect the Broadway crossing.

These crossings are so located that, as far as protection for them is concerned, they must be considered together. Both are very dangerous crossings. All of the usual precautions for protection at crossings have been taken at

these points. The signals on the steam road are so arranged that when set at "danger" by either the man at the Fulton or the Broadway crossings they cannot be changed from that position by the other man. All electric cars come to a stop, and conductors flag them over the crossing. This is done even when the derails are set in position to permit an electric car to pass over them.

On account of the dangerous physical conditions existing at this point, including the curve in the steam tracks on the west side of the crossing, the descending grade approaching the crossing from that direction, the limited view of the steam tracks from the electric tracks, the fact that the crossings are only about 250 feet apart, and both operated by the same set of signals on the steam road, and in consideration of the large volume of traffic on both the steam and electric tracks the unusual suggestion is made of placing a derail in the eastbound steam track on the west side of the crossing. As all trains approach the crossing from this direction at a slow rate of speed, it is considered that this can be done with a reasonable degree of safety, and materially add to the safety or operation of these crossings. There should be a copper trough placed on the trolley wires extending over the crossing. The special work of the Fulton street crossing should be renewed.

On Jamaica avenue the double tracks of the Brooklyn, Queens County and Suburban railroad cross two main line tracks of the Montauk division of the Long Island railroad. This is a diagonal, cut crossing, with special work in fair condition. This crossing is protected by derails in the electric tracks, interlocked with home and distant signals on the steam road, also by gates, all operated by a man on the ground at all hours. This man is notified of the approach of trains from either direction by a bell, operated from a tower, located 500 feet east of the crossing. There should be copper troughs placed on the trolley wires extending over the crossing.

On Myrtle avenue the double tracks of the Brooklyn City railroad cross two main line tracks of the Manhattan Beach division of the Long Island railroad. This is a diagonal, cut crossing, with special work in poor condition. It is protected by derails and signals on the electric tracks, interlocked with home and distant signals on the steam roads, also by gates, all operated from a tower at all hours. There should be copper troughs placed on the trolley wires extending over the crossing, and the crossing special work should be renewed.

On Cypress avenue the double tracks of the Brooklyn City railroad cross two main line tracks of the Manhattan Beach division of the Long Island railroad. This is a diagonal, cut crossing with special work in fair condition. This crossing is protected by derails and signals on the electric tracks, interlocked with home and distant signals on the steam road, also by gates, all operated from a tower at all hours. There should be copper troughs placed on the trolley wires extending over the crossing.

At the junction of Myrtle and Gates avenue the double tracks of the Brooklyn City railroad cross the single tracks of what is known as the Greenpoint division of the Long Island railroad. This is a diagonal, cut crossing with special work in fair condition. There is no operation over the steam tracks, except sufficient to comply with charter requirements. When a train is run on this track the crews protect themselves over the crossing. There is no protection at this crossing. None is suggested.

On Halsey street, near Wyckoff avenue, the double tracks of the Brooklyn City railroad cross the single track of what is known as the Greenpoint line of the Long Island railroad. This is a right angle, cut crossing, with special work in good condition. The same conditions of traffic and protection exist at this crossing as at the Myrtle and Gates avenue crossing above described. No suggestion for additional protection at this crossing is made.

On Freshpond road the double tracks of the Brooklyn City railroad cross two main line tracks of the Montauk division and one main line track of the Bushwick division of the Long Island railroad. This is a diagonal, cut crossing, with special work in good condition. This crossing is protected by derails and signals on the electric tracks, interlocked with home and distance signals on the steam road, these operated from a tower located at Metropolitan avenue crossing, 100 feet east of this crossing. The crossing

is also protected by gates, operated by a man on the ground at all hours. There are copper troughs on the trolley wires extending over the crossing.

On Metropolitan avenue the double tracks of the Brooklyn, Queens County and Suburban railroad cross two main line tracks of the Montauk division, and one main line track of the Bushwick branch, of the Long Island railroad. This is a diagonal, cut crossing, with special work in fair condition. It is protected by derails and signals in the electric tracks on the east side of the crossing, and a derail on the west side interlocked with home and distant signals on the steam road, also by gates, all of which are operated from a tower. Bushwick Junction station is located 200 feet east of the crossing. There should be copper troughs placed on the trolley wires extending over the crossing.

On Flushing avenue the double tracks of the Brooklyn City railroad cross two main line tracks of the Montauk division of the Long Island railroad. This is a right angle, cut crossing, with special work in fair condition. This crossing is protected by derails and signals in the electric tracks interlocked with home and distant signals on the steam road, these operated from a tower. It is also protected by gates, which are operated by a man on the ground at all hours. There should be copper troughs placed on the trolley wires extending over the crossing.

On Flushing avenue the double tracks of the Brooklyn City railroad cross the single main line track of the Bushwick branch of the Long Island railroad. This is a diagonal, cut crossing, with special work in poor condition. The crossing is protected by derails in the electric track, interlocked with home signals on the steam road, also by gates. All are operated by a man on the ground at all hours. There should be copper troughs placed on the trolley wires extending over the crossing. The special work of the crossing should be renewed.

On Flushing avenue, near Wyckoff avenue, the double tracks of the Brooklyn City railroad cross the single track of the Greenpoint branch of the Long Island railroad. There is no traffic over the steam track, except sufficient to meet charter requirements. As crews of trains operated on the steam track protect themselves over this crossing no additional protection is suggested.

On Metropolitan avenue, near Woodward avenue, the double tracks of the Brooklyn, Queens County and Suburban railroad cross the single track of the Bushwick branch of the Long Island railroad. This is a diagonal, cut crossing, with special work in poor condition. This crossing is protected by derails in the electric tracks, interlocked with home signals on the steam road, also by gates, all operated by a man on the ground at all hours. The special work of this crossing should be repaired, and copper troughs should be placed on the trolley wires extending over the crossing.

On Greenpoint avenue the double tracks of the Brooklyn City railroad cross two main line tracks of the Montauk division of the Long Island railroad. This is a right angle, cut crossing, with special work in good condition. It is protected by derails in the electric tracks, interlocked with home and distant signals on the steam road, also by gates, all operated from a tower located at the crossing. There should be copper troughs placed on the trolley wires extending over the crossing.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company replied as follows:

BROOKLYN, N. Y., Sept. 20th, 1904.

*State Board of Railroad Commissioners, Albany, N. Y.:*

GENTLEMEN.—We have your letter of the 8th ultimo with report dated July 18th of the electrical expert of the Board of Railroad Commissioners as to crossing at grade of the Long Island railroad and the electric railroads of the Brooklyn Heights Railroad Company (lessees of the Brooklyn City railroad and the Prospect Park and Coney Island railroad) the Brooklyn, Queens County and Suburban railroad, the Nassau Electric railroad and the Coney Island and Gravesend railroad, and beg to advise that after carefully

considering these recommendations in connection with the conditions of traffic at the various points, we have determined to take action as follows:

1. Vanderbilt avenue and Atlantic avenue.—We note that no recommendation is made for further protection at this point on account of contemplated change in the steam tracks on Atlantic avenue, which will remove the steam tracks from grade.

2. Junction of Prospect Park and Coney Island R. R. at Kensington.—We note that no recommendation is made for further protection at this point.

3. P. P. & C. I. R. R. and Bay Ridge division of Long Island R. R. crossing at Parkville.—The recommendations are as follows: "This crossing should be protected by derails and signals in the electric track interlocked with derails and signals in the steam road, these arranged so that during the summer season they will be operated by a man located at this point, during the winter season by conductors of electric cars or Long Island trains. Copper troughs should be placed on trolley wires extending over the crossing." We will take action to install derails and signals in the electric tracks interlocked with derails and signals on the steam road to be operated in accordance with the above recommendations. Because of the infrequency of service on the steam road at all seasons, and on the electric road except during the summer months, we beg to disregard the recommendation for the installation of trough work.

4. West Eighth street, Coney Island, crossing of the Nassau electric railroad with the P. P. & C. I. R. R.—We note that no recommendation is made for added protection at this point.

5. New Utrecht avenue and Bay Ridge division of the Long Island railroad near Sixty-second street.—Recommendation is that copper troughs should be placed on trolley wires extending over this crossing. For the reasons explained in paragraph No. 3 we beg to disregard the recommendation respecting the installation of troughs.

6. Stillwell and Railroad avenues, Coney Island.—We note that no recommendation is made by the electrical expert for the installation of additional safety appliances at this crossing.

7. Neptune avenue and Manhattan Beach division of the Long Island railroad.—Recommendation is made as follows: "There should be copper troughs placed on trolley wires extending over this crossing." We will comply with this recommendation.

8. Ocean avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs. We will comply with this recommendation.

9. Flatbush avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs and the renewal of the special work of the crossing. We will comply with this recommendation.

10. Liberty avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs and renewal of the special work of the crossing. We will comply with this recommendation.

11. Rockaway avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper trough. We will comply with this recommendation.

12. Rockaway avenue and Atlantic avenue division of the Long Island R. R.—We note that no recommendation is made for further protection at this crossing on account of contemplated change in the steam tracks, which will remove them from grade.

13. Broadway and Manhattan Beach division of the Long Island R. R.

14. Fulton street and Manhattan Beach division of the Long Island R. R.—We note that recommendations are made respecting these two crossings as follows: "There should be copper troughs placed on trolley wires extending over the crossing and the special work of the Fulton street crossing should be renewed." We will comply with the recommendations both as respects copper troughs at both crossings and renewal of special work in the Fulton street crossing. As to the derail suggested in the eastbound steam track on the west side of the crossing we assume that this is an improvement in which the Long Island railroad alone is concerned. (In the report the tracks on Fulton street are referred to as being the property of the Brooklyn,



Queens County and Suburban Railroad Company. These tracks are the property of the Brooklyn City Railroad Company.)

15. Jamaica avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs. We will comply with this recommendation.

16. Myrtle avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for troughs and renewal of special work in crossing. As there is but limited service on the steam tracks except during the summer season, and the traffic on the Myrtle avenue trolley line is light, we beg to disregard the recommendation for the installation of troughs. Repairs to the special work will be given attention.

17. Cypress avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs. The conditions at this point are similar to those at Myrtle avenue referred to in paragraph 16, the service being more infrequent on Cypress avenue than on Myrtle avenue. We, therefore, beg leave to disregard this recommendation.

18. Myrtle avenue and Gates avenue and Greenpoint division of the Long Island R. R.—We note that no suggestion for added protection at this point is made.

19. Halsey street and Greenpoint division of the Long Island R. R.—We note that no suggestion is made for added protection at this point.

20. Freshpond road and Montauk and Bushwick divisions of the Long Island R. R.—We note that no added protection at this point is suggested.

21. Metropolitan avenue and Montauk and Bushwick divisions of the Long Island R. R.—We note that no added protection at this point is suggested.

22. Flushing avenue and Montauk division of the Long Island R. R.—Recommendation is made for copper troughs. This recommendation will be complied with.

23. Flushing avenue and Bushwick division of the Long Island R. R.—Recommendation is made for copper troughs and the renewal of the special work of the crossing. We will make repairs to the special work, but on account of the infrequent steam service operated at this point we beg leave to disregard the recommendation respecting troughs.

24. Flushing avenue and Greenpoint branch of the Long Island R. R.—No additional protection at this point is suggested.

25. Metropolitan avenue and Bushwick branch of the Long Island R. R.—Recommendation is made for copper troughs and the renewal of the special work of the crossing. We will comply with the recommendation respecting repairs to the special work in the crossing. As to the installation of troughs we beg leave to disregard this recommendation.

26. Greenpoint avenue and Montauk branch of the Long Island R. R.—Recommendation is made for copper troughs. We will comply with this recommendation.

In the matter of troughs I beg to advise that we are investigating the use of sheet-iron in place of copper. We assume that the substitution of such troughs for copper will be satisfactory to your Board, and after we have completed our investigation as to the use of such troughs, we will communicate with you further. In the meantime we will defer action in the matter of placing troughs. All the other improvements referred to will be given our attention.

Yours truly,

J. F. CALDERWOOD,  
*Vice-President and General Manager.*

Subsequently and under date of December 15, 1904, the electrical expert reported as follows:

In the matter of the recommendations of the Board of Railroad Commissioners in reference to protection at crossings of steam railroad tracks by the tracks of the different companies operated by the Brooklyn Heights Railroad Company, I submit the following:

At the crossing of the double tracks of the Nassau electric railroad and the double tracks of the Atlantic avenue division of the Long Island railroad

considering these recommendations in connection with the conditions of traffic at the various points, we have determined to take action as follows:

1. Vanderbilt avenue and Atlantic avenue.—We note that no recommendation is made for further protection at this point on account of contemplated change in the steam tracks on Atlantic avenue, which will remove the steam tracks from grade.

2. Junction of Prospect Park and Coney Island R. R. at Kensington.—We note that no recommendation is made for further protection at this point.

3. P. P. & C. I. R. R. and Bay Ridge division of Long Island R. R. crossing at Parkville.—The recommendations are as follows: "This crossing should be protected by derails and signals in the electric track interlocked with derails and signals in the steam road, these arranged so that during the summer season they will be operated by a man located at this point, during the winter season by conductors of electric cars or Long Island trains. Copper troughs should be placed on trolley wires extending over the crossing." We will take action to install derails and signals in the electric tracks interlocked with derails and signals on the steam road to be operated in accordance with the above recommendations. Because of the infrequency of service on the steam road at all seasons, and on the electric road except during the summer months, we beg to disregard the recommendation for the installation of trough work.

4. West Eighth street, Coney Island, crossing of the Nassau electric railroad with the P. P. & C. I. R. R.—We note that no recommendation is made for added protection at this point.

5. New Utrecht avenue and Bay Ridge division of the Long Island railroad near Sixty-second street.—Recommendation is that copper troughs should be placed on trolley wires extending over this crossing. For the reasons explained in paragraph No. 3 we beg to disregard the recommendation respecting the installation of troughs.

6. Stillwell and Railroad avenues, Coney Island.—We note that no recommendation is made by the electrical expert for the installation of additional safety appliances at this crossing.

7. Neptune avenue and Manhattan Beach division of the Long Island railroad.—Recommendation is made as follows: "There should be copper troughs placed on trolley wires extending over this crossing." We will comply with this recommendation.

8. Ocean avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs. We will comply with this recommendation.

9. Flatbush avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs and the renewal of the special work of the crossing. We will comply with this recommendation.

10. Liberty avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs and renewal of the special work of the crossing. We will comply with this recommendation.

11. Rockaway avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper trough. We will comply with this recommendation.

12. Rockaway avenue and Atlantic avenue division of the Long Island R. R.—We note that no recommendation is made for further protection at this crossing on account of contemplated change in the steam tracks, which will remove them from grade.

13. Broadway and Manhattan Beach division of the Long Island R. R.

14. Fulton street and Manhattan Beach division of the Long Island R. R.—We note that recommendations are made respecting these two crossings as follows: "There should be copper troughs placed on trolley wires extending over the crossing and the special work of the Fulton street crossing should be renewed." We will comply with the recommendations both as respects copper troughs at both crossings and renewal of special work in the Fulton street crossing. As to the derail suggested in the eastbound steam track on the west side of the crossing we assume that this is an improvement in which the Long Island railroad alone is concerned. (In the report the tracks on Fulton street are referred to as being the property of the Brooklyn,

Queens County and Suburban Railroad Company. These tracks are the property of the Brooklyn City Railroad Company.)

15. Jamaica avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs. We will comply with this recommendation.

16. Myrtle avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for troughs and renewal of special work in crossing. As there is but limited service on the steam tracks except during the summer season, and the traffic on the Myrtle avenue trolley line is light, we beg to disregard the recommendation for the installation of troughs. Repairs to the special work will be given attention.

17. Cypress avenue and Manhattan Beach division of the Long Island R. R.—Recommendation is made for copper troughs. The conditions at this point are similar to those at Myrtle avenue referred to in paragraph 16, the service being more infrequent on Cypress avenue than on Myrtle avenue. We, therefore, beg leave to disregard this recommendation.

18. Myrtle avenue and Gates avenue and Greenpoint division of the Long Island R. R.—We note that no suggestion for added protection at this point is made.

19. Halsey street and Greenpoint division of the Long Island R. R.—We note that no suggestion is made for added protection at this point.

20. Freshpond road and Montauk and Bushwick divisions of the Long Island R. R.—We note that no added protection at this point is suggested.

21. Metropolitan avenue and Montauk and Bushwick divisions of the Long Island R. R.—We note that no added protection at this point is suggested.

22. Flushing avenue and Montauk division of the Long Island R. R.—Recommendation is made for copper troughs. This recommendation will be complied with.

23. Flushing avenue and Bushwick division of the Long Island R. R.—Recommendation is made for copper troughs and the renewal of the special work of the crossing. We will make repairs to the special work, but on account of the infrequent steam service operated at this point we beg leave to disregard the recommendation respecting troughs.

24. Flushing avenue and Greenpoint branch of the Long Island R. R.—No additional protection at this point is suggested.

25. Metropolitan avenue and Bushwick branch of the Long Island R. R.—Recommendation is made for copper troughs and the renewal of the special work of the crossing. We will comply with the recommendation respecting repairs to the special work in the crossing. As to the installation of troughs we beg leave to disregard this recommendation.

26. Greenpoint avenue and Montauk branch of the Long Island R. R.—Recommendation is made for copper troughs. We will comply with this recommendation.

In the matter of troughs I beg to advise that we are investigating the use of sheet-iron in place of copper. We assume that the substitution of such troughs for copper will be satisfactory to your Board, and after we have completed our investigation as to the use of such troughs, we will communicate with you further. In the meantime we will defer action in the matter of placing troughs. All the other improvements referred to will be given our attention.

Yours truly,

J. F. CALDERWOOD,  
Vice-President and General Manager.

Subsequently and under date of December 15, 1904, the electrical expert reported as follows:

In the matter of the recommendations of the Board of Railroad Commissioners in reference to protection at crossings of steam railroad tracks by the tracks of the different companies operated by the Brooklyn Heights Railroad Company, I submit the following:

At the crossing of the double tracks of the Nassau electric railroad and the double tracks of the Atlantic avenue division of the Long Island railroad

on Vanderbilt avenue, operation on the steam tracks has been abandoned and the tracks are being removed from the street.

The Parkville crossing of the double tracks of the Prospect Park and Coney Island railroad and the double tracks of the Bay Ridge division of the Long Island railroad:—plans have been prepared for the equipment of this crossing, in accordance with the Board's recommendations.

The company are in correspondence with the manufacturers of copper troughs, and expect to be able to comply with the Board's recommendations in reference to copper troughs at all of the crossings in the early spring.

With the above exceptions the Board's recommendation for protection at crossings of this company's system have not been complied with.

A copy of this report was sent to the company, which informed the Board as follows:

BROOKLYN, N. Y., Feb. 20th, 1905.

MR. GEO. W. ALDRIDGE, *Secretary State Board of Railroad Commissioners, Albany, N. Y.:*

DEAR SIR.—Referring to recommendations made on August 8th last by the Railroad Commission respecting the installation of signals for the protection of the crossing of the P. P. & C. I. R. R. with the Bay Ridge branch of the Long Island railroad known as Parkville crossing, this matter has been the subject of correspondence with the Long Island R. R. Co. since that time and President Potter now advises me that work will be started on the Bay Ridge branch improvement at that point in the near future, which consists of building abutment walls for the Gravesend avenue bridge, and as this will necessitate a temporary change of the tracks of the Long Island R. R. Co., and possibly also of the P. P. & C. I. R. R., it will render inoperative any interlocking devices which may be installed at that point; and, furthermore, any interlocking devices which are installed to protect the present grade crossings will not be required after the improvement at that point is completed. In view of this, it is recommended that a flagman be placed at the crossing at all times. It was our practice during the season when frequent service was operated over the P. P. & C. I. line to maintain a flagman at all hours, and the proposed plan contemplates the employment of a flagman the year round and at all hours of the day and night.

At present the rules governing this point require that conductors of electric and steam trains shall precede their train and from the crossing flag the train across. In view of the above we respectfully request that the Commission approve the employment of a flagman at all hours and in all seasons until such time as the grade crossing is eliminated.

May I request an early reply?

Yours truly,

J. F. CALDERWOOD,  
*Vice-President and General Manager.*

The Board informed the company as follows:

ALBANY, April 3, 1905.

J. F. CALDERWOOD, ESQ., *Vice-Pres. and Gen. Mgr. The Brooklyn Heights R. R. Co., 168 Montague Street, Brooklyn, N. Y.:*

DEAR SIR.—Referring further to your letter to this Board of Feb. 20 last, in relation to the stationing of a flagman at all hours at the crossing at grade of the Prospect Park and Coney Island railroad (leased to and operated by the Brooklyn Heights Railroad Company) and the Bay Ridge branch of the Long Island railroad, the crossing being known as the Parkville crossing. I have to say that, under the circumstances as stated in your letter, if a flagman is employed at this crossing at all times, the Board will consider this a compliance with its recommendation contained in its letter to E. W. Winter, the president of the company, of August 8 last.

Very truly yours,

E. C. MCENTEE,  
*Assistant Secretary.*

## ELMIRA WATER, LIGHT AND RAILROAD COMPANY.

(December 11, 1905.)

At p. 499, 1st vol. 1904 report of this Board, will be found a statement of the condition of the Lake street bridge in Elmira, used by cars of this company. A new bridge is being constructed at this point. (Case No. 2327.)

## KINGSTON CONSOLIDATED RAILROAD COMPANY.

(July 22, 1905.)

Report by Superintendent of Grade Crossing Bureau.

Concerning the complaint of "A Resident" as to the absence of the guard wire above the trolley wire of the Kingston Consolidated railroad, from the Strand to the car barn, on Broadway, in the city of Kingston, "except in two spots of about 50 ft. each,"—I have to report that while the complainant is not wholly accurate in his statements, he is in the main correct.

The Strand is a street within a few hundred feet of the Hudson river; the car barn is perhaps three-quarters of a mile to the west. The alignment of Broadway, on which the tracks of the electric railroad are located, is very irregular.

Beginning at the car barn there is a guard over the trolley wire for about 150 feet toward the east; from this point there is no guard until Chestnut street is reached; about 100 feet west of this street a guard wire running from one of the side poles is up and extends for a distance of about 800 feet easterly to McEntee street. This is the extent of the guard wire protection. There is a considerable number of wires on each side of Broadway, and wires cross the trolley wire at the following intersecting and joining streets where there is no guard wire: Stuyvesant, East Pierpont, Meadow, West Union, Abeel and Mill. Incidentally, it may be stated that the guard wire west of the car barn to the West Shore tracks is missing also. In the 800-ft. stretch between Chestnut and McEntee streets where there is a guard wire, the latter is so placed at some points that it really forms no guard at all. For instance, on the curve just east of Chestnut street the guard and trolley wire are stretched in different chord lengths in such a manner that at some places the distance in a horizontal plane between verticals through the wires appears to be about six feet.

The Board in 1892, in granting the application by the Kingston City Railroad Company for a change of motive power, made five recommendations, the fourth of which is quoted: "The company shall construct a guard wire over the trolley or feed wire so as to prevent broken telegraph, telephone or other wires coming in contact with it." It is evident that this recommendation was carried out at that time, as the cross wires which formerly supported the guard wire are in most places still up.

A copy of this report was sent to the company, with the recommendation that proper precautions in this matter be taken. The company informed the Board as follows:

KINGSTON CONSOLIDATED R. R. Co.

Office of the General Manager, 320 Broadway.

KINGSTON, N. Y., August 10, 1905.

E. C. McENTEE, Esq., Ass't Sec'y Board of Railroad Commissioners, Albany, N. Y.:

DEAR SIR.—I beg to acknowledge your letter of August 9th relative to guard wires.

Thirteen years ago, when the guard wire provision was made, it was generally believed that direct current at 550 volts was extremely dangerous,

and that a wire over the trolley would afford some degree of protection. Since that time it has been demonstrated that such a current is not highly dangerous, and furthermore that such a wire affords no reliable protection. In this latter connection our experience here teaches us that it is better to have a crossed wire burn clear than to hang over near the trolley making occasional swinging contacts. I have never known a single instance when a wire laid over this guard wire without coming in contact with the trolley.

With the foregoing in mind it is but natural for us to feel a hesitancy about continuing a construction which we think dangerous, especially as the most progressive trolley companies at the present time regard it as obsolete.

Yours very truly,

C. GORDON REEL.

The Board did not proceed further in the matter. (Case No. 3343.)

#### NIAGARA GORGE RAILROAD COMPANY.

(July 31, 1905.)

In the matter of the steel guard rail which the Niagara Gorge Railroad Company are placing on their tracks along the bank of the Niagara river, I submit that on July 17, 1905, I made an investigation and found that the company are replacing the guard timber on the high bank and heavy grade on the Niagara Falls end of the line, by a new eight by ten-inch yellow pine guard timber, bolted, with nut and washer, through every fourth tie, joints beveled, and splices bolted. This work was being done and the company had on hand all of the timber necessary for its completion. They were also replacing the guard timber along the other portions of the route with 60-pound tee rail, placed on high chairs, which were spiked to every fifth tie. Work was being done on this portion of the line, and the company had on hand enough rail to replace about two miles of the old timber.

The work on the high bank and heavy grade is being done in a first-class manner, and when completed will afford as good if not better protection than did the original guard timber. The work being done on the remaining portion of the line will result in better protection than was furnished by the guard timber originally placed along the river bank, but some improvement could be made in the manner of placing this guard rail. The chairs are now spiked to the ordinary ties, which in some cases are too short for that purpose. In some cases the chair ties are of soft wood. The rail splices are fish plates, a portion of which extends beyond the inner surface of the rail. This projection makes an obstruction to the flange of a derailed wheel, and might cause it to climb the rail.

It is the company's intention to extend the work of the construction of the steel guard rail over a number of years. On account of the physical conditions on this road the importance of the guard rail is such that the whole line should be equipped with it as soon as possible.

To increase the element of safety caused by the construction of the guard rail along the river bank, the following recommendations are made:

#### *Recommendations.*

1. That all chair ties be of oak, seven by nine inches by nine feet six inches.

2. That the present fish plates used for joints be replaced by a close-fitting iron plate on the track side of the rail.

3. That the work of construction of the guard rail along the whole of the line be completed not later than May 1, 1906.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. See p. 503, 1st vol. 1904 report of this Board. (Case No. 2279.)

## OGDENSBURG STREET RAILWAY COMPANY.

(August 9, 1905.)

August 4, 1905, I called on E. E. Hawkins President of the Ogdensburg Street Railway Company, and also made a supplementary inspection of that company's system.

The company are reconstructing their lines in the business portion of the city, replacing old rail with seven-inch girder, laid on concrete ties. They have relaid about 1,100 feet of this rail, and outside of the business portion of the city they have reconstructed about 3,000 feet of track with 60-pound tee rail. The Hospital line has been extended 1,500 feet by new construction of 60-pound tee rail, and now extends to a summer resort known as Sandy Beach. All of the Hospital line has been resurfaced, aligned, rebonded, and new fish plates have been added.

All of the summer cars have been repaired; trucks, motors, etc., put in proper condition, and car bodies painted. All of the winter cars are now being repaired in the same manner.

The company have put up a repair shop with power tools, of sufficient capacity and with proper appliances for doing all their own car repairing.

The company have contracted with a power company which will insure their receiving all of the power necessary for maximum operation. This contract takes effect September 15th of this year.

The company have rail distributed for guard rail along that portion of the track which is constructed on the high bank along the Rutland railroad, and in compliance with the Board's recommendations this guard rail will be put in place this week.

While this company has not complied with all of the Board's recommendations, I am assured by Mr. Hawkins that it is their intention to do so in the near future. They are endeavoring to put the system in good condition, and are expending a considerable amount of money on improvements. The important recommendations, and the ones which affect safety of operation which have not been complied with are the stop signs, copper trough on crossing of switch track on King street, copper trough on crossing of the Rome, Watertown and Ogdensburg railway tracks on River street, oil tail lights on cars running on the suburban lines, and double chain brakes on cars operated on heavy grades. Mr. Hawkins assured me that these recommendations will receive his immediate attention, and will be complied with.

A copy of this report was sent to the company, which answered as follows:

OGDENSBURG, N. Y., Sept. 19, '05.

MR. J. S. KENNEDY, *Sect. Board of Railway Comm., Albany, N. Y.:*

DEAR SIR.—Since my conference with your Mr. Barnes we have placed stop signs as he recommended, have guarded the track along the high bank of the Rutland railroad.

We are taking up the matter of oil tail lights and chain brakes on our cars. As we are trying to do away with the railroad grade crossings, in the near future, I have held off the matter of copper troughs.

I wish to state that we are heartily in accord with Mr. Barnes's recommendations and we are doing everything possible for the safety of our patrons.

Yours very truly,

E. E. HAWKINS,

*Pres.*

See p. 508, 1st vol. 1904 report of this Board. (Case No. 2795.)

## OLEAN, ROCK CITY AND BRADFORD RAILROAD COMPANY.

(August 23, 1905.)

I have made a supplementary inspection of that portion of the Olean, Rock City and Bradford Railroad Company's system which is in the State of New York, and submit the following:

At this date I find that no permanent improvement has been made in the company's track or roadbed. Temporary repairs have been made to the bridges and trestles, and at present they are safe for the traffic which passes over them. Some of the badly worn rail has been replaced by 48-pound rail taken from the tracks of the Bradford City railroad.

Since the last supplementary inspection report on this road, dated August 2, 1904, a large portion of the track has been resurfaced and aligned, but at present there are a number of low joints and the alignment is not good. Between Bradford and Olean I found only two trackmen at work. A number of the rails which were badly worn have been turned, and are at present considerably worn on the other side of the ball.

All cars operated over the line at present are equipped with air and hand brakes; sand is carried on each car.

The running time has been restored to two hours.

Methods of operation have been improved; the discipline appears to be good, and the road is in charge of a competent superintendent.

While this road has been operated since the last inspection report was made without accidents, some of the conditions existing on it are favorable for their occurrence, and if it is operated until the spring of 1906 with the present track force, the track will certainly not be in safe condition to run cars on.

Temporary repairs will not put this road in first-class condition. Its location is such that it should be a first-class road in construction and equipment.

August 11 and 17, 1904, the company were cited before the Board in reference to the condition of this road, and at that time agreed to make temporary improvements in the roadbed, structures and cars, which they have done. They also stated that they were making financial arrangements which would enable them to reconstruct and reequip the road in a proper manner, which they would commence upon the completion of the financial arrangements which they were then negotiating. August 22, 1905, I was informed by an officer of the company that the financial negotiations pending at that time had not been completed, but they were in hopes to secure money from another source which would enable them to carry out their promises made to the Board.

This railroad must be at least maintained in its present condition until the spring of 1906. By that time the rails now in use will be in such condition that the Board will be justified in taking proper steps to immediately close the road to traffic.

To assure the maintenance of the track and roadbed in at least as good condition as it is at present, the following recommendations are made:

#### *Recommendations.*

1. That the track force be increased to a sufficient number to properly maintain the track.

2. That on or before January 1, 1906, the company satisfy the Board of Railroad Commissioners of its financial ability and its purpose to entirely reconstruct the road from the State line to the Olean terminus, and to equip all of its cars operated between Bradford and Olean with motors of sufficient capacity.

A copy of this report was sent to the company, with a letter making the recommendations in the report the recommendations of this Board. The company informed the Board as follows:

BRADFORD, PA., Sept. 19, 1905.

Honorable Board R. R. Commissioners., Mr. J. S. KENNEDY, Secy., Albany, N. Y.:

DEAR SIR.—I am in receipt of your esteemed favor of the 13th inst., also copy of report of Mr. Barnes, for which I thank you. We note your recommendations and shall endeavor to conform to same. At the time Mr. Barnes



went over our road we were doing considerable reconstructing work in the city of Bradford, and temporarily diverted our trackmen from the Olean, Rock City and Bradford road to the city road for a few days only. I think in about two days after Mr. Barnes was here a suitable track force was put to work on the O., R. C. & B. line. We intend to make quite a number of improvements on our track this fall and we feel very confident that the portion of our line between State line and Olean will be reconstructed next spring in a manner satisfactory to your honorable Board.

Very truly yours,

CHAS. E. HUDSON,  
*Manager.*

See p. 504, 1st vol. 1904 report of this Board. (Case No. 3196.)

OSSINING ELECTRIC RAILWAY (WESTCHESTER TRACTION COMPANY). . .

(March 18, 1905.)

At p. 657, 1st vol. 1901 report of this Board, will be found a report as to the physical condition of this railroad. Under date of December 21, 1904, the electrical expert of this Board made the following report:

In the matter of the recommendations of the Board of Railroad Commissioners, in reference to the physical conditions, car equipment and methods of operation of the Ossining Electric railway, at this date I find that the company have not complied with the first recommendation and cars are not equipped with emergency truck brakes.

They have complied with the second recommendation by adding additional brake rods independently connected to the brake levers.

They have complied with the third recommendation, and all open cars operated on the main line are equipped with sand boxes.

In the matter of the fifth recommendation, in reference to guard rails on the Kill street bridge, there has been guard rails placed on the south rail from the east end of the bridge to a point about 120 feet west of the bridge. This guard rail shall be extended around the curve on the east end of the bridge.

In the matter of the sixth recommendation, in reference to block signals, this has not been complied with.

Regarding the seventh recommendation that cars be equipped with oil tail-lights; this has not been complied with.

In the matter of the fourth recommendation, which refers to the operation of cars without conductors on portions of this company's system and which was the subject of your letter of October 19, 1904, I find that the company have not complied with the Board's recommendation, which is "That there shall be a conductor on each car on the main line, while it is in operation." Safety of operation requires that this recommendation should be complied with, especially on a line on which there are as heavy grades as on the main line of this company's system.

A copy of this report was sent to the company, with a letter calling its attention to the recommendations of this Board. The company answered as follows:

NEW YORK, Mar. 16, 1905.

I enclose you herewith copy of letter received from Mr. Chas. H. Stocum, General Manager, relative to the recommendations of the Commission as to the Westchester Traction Co.

In addition to this I would say that it is confidently expected that active work on extension of this road will be commenced in a few weeks, which will change the entire situation, and render necessary the carrying out of the recommendations in all respects.

Very truly yours,

J. M. CROLY,  
*President.*

OSSINING, N. Y., Mar. 15, 1905.

Mr. J. M. CRONLY, *President*, 120 Broadway, N. Y.:

DEAR SIR.—Referring to the recommendations of the Board of Railroad Commissioners would report as follows: 1st. The matter of emergency truck brakes is quite a difficult one owing to the style of our trucks; it means practically reconstructing the trucks in order to put them on.

4th. The matter of cars being operated on main lines without conductors would advise that when the summer cars are put in operation that each car will have both a motorman and conductor.

5th. Regarding the guard rail on the Kill bridge would say that I have this rail already to be placed in position which will be done in the very near future.

6th. In reference to block signals would say that this seems quite unnecessary, as no car is allowed to proceed through switch or turnout until the car running in opposite direction is safely in said switch or turnout.

7th. Regarding the use of oil tail-lights seems unnecessary as at no time are there two cars between any two turnouts or switches, thus making rear-end collisions impossible.

Yours very truly,

CHAS. H. STOCUM,  
*General Manager.*

(Case No. 2227.)

ROCHESTER AND EASTERN RAPID RAILWAY.

(January 31 1905.)

January 29th I made a supplemental inspection of the Rochester and Eastern Rapid railway and submit the following:

At this date I find that the track of this company is in fair condition, and greatly improved over what it was a year ago. It is in such shape that it is safe for the scheduled speed made over it and its improvement has materially added to the comfort of passengers riding over it, compared with last winter.

On account of the snow I am unable to state whether the recommendation as to ballasting has been entirely complied with or not.

See p. 511, 1st vol. 1904 report of this Board. (Case No. 3207.)

# MINUTES OF THE BOARD.

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REPORTED IN PURSUANCE OF SECTION 166 OF THE RAILROAD  
LAW.

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[For the treatment of complaints against corporations coming under the supervision of the Board, the following method of procedure has been adopted: Upon receipt of a complaint a copy of the complaint is at once forwarded to the officers of the corporation against which complaint is made, with the request to answer within ten days. Reply to the complaint is then transmitted to the complainant, and if the matter is not satisfactorily adjusted by correspondence, a public hearing, if necessary, is had before the Board and such order made as the evidence then adduced seems to warrant. Other matters coming before the Board are governed by rules of procedure, made by it, which rules are published in this volume.]

NEW YORK, DECEMBER 9, 1904.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

## *Hearings.*

Application of the South Shore Traction Company for consent to the issue of a first mortgage for \$3,000,000. Arthur C. Hume, A. J. Rodenbeck and J. T. Rogers (Mr. Rogers was not present) for the applicant. After hearing arguments the hearing was closed. (Case No. 3251.)

Application of The Chateaugay and Lake Placid Railway Company for approval of an increase of its capital stock from \$450,000 to \$2,450,000. William S. Opdyke for the applicant. After hearing arguments the hearing was closed. (Case No. 3240.)

Application of the New York and Canada Railroad Company for approval of an increase of its capital stock from \$4,000,000 to \$9,000,000. William S. Opdyke for the applicant. After hearing arguments the hearing was closed. (Case No. 3239.)

Application of the Coney Island and Brooklyn Railroad Company for consent to the issue of a mortgage for \$10,000,000. W. N. Dykman for the applicant. After hearing arguments the hearing was closed. (Case No. 3260.)

## *Reports.*

Report of the inspector and the superintendent of the grade crossing bureau, dated December 9, 1904, of their examination on December 2 of the Erie Railroad Company's bridge spanning the Chenango river and the island at Binghamton. Ordered copy sent company with a letter of recommendation as shown by office original letter of recommendation on file. (Case No. 3264.)

The Secretary was directed to ask the opinion of the Attorney-General of the jurisdiction of this Board over the operation of the railroad subway in New York city operated by the Interborough Rapid Transit Company. (Case No. 3263.)

*Orders.*

Application of the South Shore Traction Company for consent to the issue of a first mortgage for \$3,000,000. Granted, on condition that but \$2,500,000 bonds under said mortgage shall be issued thereunder under this consent and that before the remaining \$500,000 bonds or any portion thereof under said mortgage are issued, application shall be made to this Board for its approval of the issue of said remaining \$500,000 bonds or any portion thereof and said approval secured. (Case No. 3251.)

Application of the Chateaugay and Lake Placid Railway Company for approval of an increase of its capital stock from \$450,000 to \$2,450,000. Granted. (Case No. 3240.)

Application of the New York and Canada Railroad Company for approval of an increase of its capital stock from \$4,000,000 to \$9,000,000. Granted. (Case No. 3239.)

*Bills Approved.*

The following bills were approved:

*General Expenses.*

Battery Place Realty Co., December rent.....	\$150 00
George W. Dunn (expenses).....	230 00
Joseph M. Dickey (expenses).....	345 00
Charles R. Barnes (expenses).....	170 00
J. D. Shultz (expenses).....	34 55
	<hr/>
	\$929 55
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*Grade Crossing Expenses.*

James E. Brazee (expenses).....	\$35 05
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The Board adjourned.

ROCHESTER, DECEMBER 14, 1904.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

In the matter of the application of the city of Niagara Falls, under section 62 of the Railroad Law, as to changing the Pine street grade crossing of the Erie Railroad and the claimed right of way of the Buffalo, Thousand Islands and Portland Railroad Company to an overcrossing, in which matter the evidence on the merits was closed July 22, 1903, Augustus Thibadeau, city attorney, and Walter P. Cooke, attorney, Buffalo, Thousand Islands and Portland Railroad Company, appeared before the Board and at the request of Mr. Cooke the further hearing on the question of whether or not the proposed structure (if the Board determines that it shall be constructed) shall be so constructed as to cross above the claimed right of way in Pine street of the Buffalo, Thousand Islands and Portland Railroad Company or whether the approach to the structure shall obstruct said claimed right of way was adjourned to a date to be thereafter fixed. (Grade Crossing Case No. 293.)

Adjourned hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law. George L. Lewis and Safford E. North for the applicant; Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company in opposition; Arthur E. Clark for himself and other property owners on East Main street, Batavia, in opposition. After hearing evidence and arguments a recess was taken until 2.15 p. m. (Case No. 3238.)

AFTER RECESS—2:15 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned to a date to be thereafter fixed. The applicant closed its case, except in rebuttal. (Case No. 3238.)

*Complaints.*

Complaint of S. D. Miller and others of Rensselaer as to a proposed lease of the portion of the United Traction Company's railway in Rensselaer to the Cohoes City Railway Company. Ordered letter written complainant to the effect that this Board has no jurisdiction in the matter, and the case closed. (Case No. 3266.)

*Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 25, 1904, as to changing the Chautauqua road or Valley street (or Lake road) in the village of Mayville, Chautauqua county, grade crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) to an overcrossing of the railway, a report dated December 13, 1904, was received from the superintendent of the grade crossing bureau to the effect that the detailed plans for the over crossing submitted to this Board by the company were defective. On November 30, 1904, the Board approved these plans and approved specifications and estimate of expense for this work. Ordered, that said approval of said plans, specifications and estimate of expense be withdrawn. (Grade Crossing Case No. 491.)

*Orders.*

Application of the Coney Island and Brooklyn Railroad Company for consent to the issue of a mortgage for \$10,000,000. Granted, as shown by office original determination on file, on condition that but \$5,500,000 bonds shall be issued under this consent and before the remaining \$4,500,000 bonds under said mortgage or any portion thereof shall be issued application shall be made to this Board for consent to the issue of said \$4,500,000 bounds under said mortgage or any portion thereof. (Case No. 3260.)

The Board adjourned.

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ROCHESTER, DECEMBER 15, 1904.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of the Albion and Lockport Railway (street surface) for a certificate under section 59 of the Railroad Law. Charles B. Hill, A. B. Boardman and A. K. Potter for the applicant (Mr. Boardman was not present, but Dudley Phelps, representing Mr. Boardman, was present); George F. Thompson, for the Board of Trustees of the village of Middleport, in favor of the application; A. H. Harris for the New York Central and Hudson River Railroad Company in opposition to the application. After hearing evidence and arguments a recess was taken until 2:00 p. m. (Case No. 3223.)

## AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of the Albion and Lockport Railway (street surface) for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. The applicant, without the calling of other witnesses, closed its case, except in rebuttal. Mr. Harris moved to dismiss the application on the grounds that public convenience and a necessity do not require the construction of the applicant's railroad, and on the ground that the 10 per cent. of the capital stock had not been paid as required by statute before the filing of the articles of association (see stenographer's minutes). The Board reserved decision on this motion. (Case No. 3223.)

The matter of the application of the Albion and Rochester Railway (street surface) for a certificate under section 59 of the Railroad Law, which was to have been heard to-day, was not called, but the hearing on this application is adjourned to a date to be thereafter fixed. (See minutes of November 16, 1904.) No evidence has been taken in this case. (Case No. 3224.)

The Board adjourned.

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BUFFALO, DECEMBER 16, 1904.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of The Electric City Railway Company (street surface) for a certificate under section 59 of the Railroad Law, King, Leggett & Brown (Mr. King and Mr. Leggett appearing) for the applicant; Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company, as to proposed crossings of that company's railroad by the applicant's railroad; Bissell, Carey & Cooke (L. M. Bass appearing) for the the Buffalo, Thousand Islands and Portland Railroad Company; Cromley & Gittins (Mr. Cromley appearing) generally for Peter F. Porter, a property owner on First street and River street; Morris Cohn, Jr., for the International Railway Company, in opposition. After hearing evidence and arguments a recess in this matter was taken until 2 p. m. (Case No. 3156.)

Application of the Pennsylvania Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of its station at Idlewood on its Chautauqua division, about 16.2 miles from Buffalo. Frank Rumsey for the applicant; no one in opposition. After hearing arguments the hearing was closed. (Case No. 3233.)

## AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of The Electric City Railway Company (street surface) for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning, with the addition of Adelbert Moot for the Erie Railroad Company generally, and for Sarah Sturdy, a property owner on Cherry street, Niagara Falls, in opposition. After hearing evidence and arguments the evidence was closed. Briefs are to be exchanged between Mr. King and Mr. Cohn and Mr. King and Mr. Moot and Mr. Cromley within twenty days from this date and filed with this Board within thirty days from this date. (Case No. 3156.) The Board notified attorneys for the applicant that it would hear in executive session proof on the *bona fides* of the applicant at some future date.

*Orders.*

Application of the Pennsylvania Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of its station at Idlewood on its Chautauqua division, about 16.2 miles from Buffalo. Granted. (Case No. 3233.)

The Board adjourned.

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ALBANY, DECEMBER 21, 1904.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

The minutes of the meetings of November 30, December 9, 14, 15 and 16 were read and approved.

*Hearings.*

Application of the Buffalo and Susquehanna Railway Company, under section 60 of the Railroad Law, for a modification of the determination of the Board, dated August 10, 1904, in the application of said company, under said section, the modification asked for being that said railway shall cross Clark street in the town of Hamburg, Erie county, at grade instead of overgrade, as decided in said determination. Bissell, Carey & Cooke (Mr. Carey and Mr. Cooke appearing) for the applicant; Perry M. Thorn, A. L. Stratmier and John Schoepflin (supervisor) for the town of Hamburg; G. T. Rogers, John F. Burke and J. B. Rumsey for the Buffalo Southern Railway Company. Without the hearing of evidence or arguments the hearing was adjourned to a date to be thereafter fixed, of which at least one week's notice is to be given, this hearing to be set upon the application of any one appearing on this date. (Grade Crossing Case No. 478.)

In the matter of the recommendations of this Board as to the installation of derailling switches in the electric railway at points where the steam and electric divisions of the Fonda, Johnstown and Gloversville Railroad cross at grade, J. N. Shannahan, general superintendent of the company, appeared before the Board and asked that its recommendations as to these details be withdrawn. After hearing arguments the hearing was closed. (Case No. 3215.)

Application of the "Corning and Painted Post Street Railway" for approval of petition to the Supreme Court for leave to change its name to "Elmira, Corning and Painted Post Railway." Thomas O'Connor for the applicant. After hearing arguments the hearing was closed. (Case No. 3267.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 19, 1904, as to the Cady's grade crossings of the Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) in the town of Chatham, Columbia county, A. B. Gardenier, attorney for the company, appeared before the Board and filed with it a notice of hearing on this date served on certain persons in an application for a modification of the determination, the application being made verbally by Mr. Gardenier, who filed with the Board a proposed form of determination that the modification should be made as stated therein. The hearing was closed. No one but Mr. Gardenier appeared. (Case No. 494.)

*Applications.*

Application of the Glenfield and Western Railroad Company, under section 55 of the Railroad Law, for permission to cease the operation of its railroad from January 1, 1905, to May 1, 1905. A report in this matter, dated December 15, 1904, was made by the inspector. (Case No. 3262.)

*Crossings.*

Petition (concurrent in by the Buffalo and Susquehanna Railway Company) of the town board of the town of Caneadea, Allegany county, under section 60

of the Railroad Law, for a modification of the determination of this Board, under said section, dated June 14, 1904, in the matter of the application of the Buffalo and Susquehanna Railway Company, under said section, for a determination of the manner in which its single track railway shall cross streets, avenues and highways in the county of Allegany,—the modification asked for being that said railway shall cross at grade the highway in said town known as the Crawford Creek road, instead of over the grade of said highway, as set forth in said determination. Ordered, hearing set for Albany, Wednesday, January 4, 1905, at 11 a. m. (Grade Crossing Case No. 479.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a plan for the new bridge over the canal at Union street, Schenectady, was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered, said plan approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a plan for the substructural work in the reconstruction and rearrangement of the overhead crossing of The Delaware and Hudson Company's Railroad by the main line of the New York Central and Hudson River Railroad was submitted to the Board by the company, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered, said plan approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street grade crossing of the New York Central and Hudson River Railroad in the city of Rochester to an undercrossing of the railroad, and the crossing of the east end of Davis street, where it now joins North Union street, a general plan for this work upon which minor corrections have been made, showing additional manholes and the grade of sewers, was submitted to the Board by the company, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered filed; the general plan for this work, except these minor corrections, having been heretofore approved and it not being necessary to approve this plan. (Grade Crossing Case No. 416.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings of the railroad, specifications for the steel railroad bridges and for the grading and masonry and specifications of the city of Schenectady for the street work were submitted to the Board by the company, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered, said specifications approved. (Grade Crossing Case No. 390.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, as to changing the Broadway grade crossing of the New York and Putnam Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) near Van Cortlandt station, New York city, to an undercrossing of said railroad, proposals of contractors for the superstructure were submitted to the Board by the company, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered, approved, the proposal of the Boston Bridge Works, viz., \$4,766. See minutes of October 18, 1904, as to the company doing the whole of the work to complete this undercrossing itself. (Grade Crossing Case No. 503.)



In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 19, 1904, as to the construction of an undercrossing for pedestrians at the Main street, Herkimer, grade crossing of the New York Central and Hudson River Railroad, and modified determination, dated September 29, 1904, plan and an estimate of expense for the work were submitted to the Board by the company, together with a report thereon dated December 13, 1904, from the superintendent of the grade crossing bureau. Ordered, said plan and estimate, the estimate being \$9,500, approved. Also ordered, approved the construction of canopies over the openings of the subway, at additional estimated cost of \$190. See minutes of November 30, 1904. (Grade Crossing Case No. 498.)

In the matter of the recommendation of this Board to the Union Railway Company as to its employing a watchman to protect its passengers crossing at grade the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at Mount Vernon avenue in the city of Mount Vernon, a letter, dated December 9, 1904, was received from the company. Ordered, that the electrical expert make a report in this matter. (Grade Crossing Case No. 282.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 11, 1901, as to changing the Main street grade crossing of the Albany and Susquehanna Railroad (leased to and operated by The Delaware and Hudson Company) in the village of Oneonta to an overcrossing, an accounting and settlement of the cost between the company and the village were submitted to the Board, together with a report thereon, dated December 13, 1904, by the superintendent of the grade crossing bureau. Ordered, that the State's proportion of the cost, viz., \$29,687.10, be paid to The Delaware and Hudson Company. (Grade Crossing Case No. 317.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the Ionia and East Bloomfield road highway grade crossing of the Auburn branch of the New York Central and Hudson River Railroad in the town of West Bloomfield, Ontario county, and the construction of a new piece of highway and an undercrossing of said railroad, proposals of contractors for the superstructure were submitted to the Board by the company, together with a report thereon, dated December 15, 1904, by the superintendent of the grade crossing bureau. Ordered, approved the proposal of the Pennsylvania Steel Company at its unit price of 2.75 cents per pound, estimated to amount to \$550. (Grade Crossing Case No. 396.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 25, 1904, as to changing the Chautauqua road or Valley street (or Lake road), in the village of Mayville, Chautauqua county, grade crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) to an overcrossing, a further report, dated December 16, 1904, was received from the superintendent of the grade crossing bureau. Ordered, copy of said report sent to Pennsylvania Railroad Company. (Grade Crossing Case No. 491.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated April 15, 1902, as to changing a grade crossing of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), the New York Central and Hudson River Railroad and the Oswego and Syracuse Railroad (leased to and operated by the Delaware, Lackawanna and Western Railroad) in the town of Geddes, Onondaga county, to an overcrossing,—a special plan and estimate (the estimate being \$1,500) for the north abutment at this overcrossing were submitted to the Board by the company, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered, said special plan and estimate approved. In this matter there was also submitted to the Board an estimate by the company of \$500 for corrugated iron shields upon and above the railing on each side of the bridge, together with a report thereon, dated December 15, 1904, from the superintendent of the grade crossing bureau. Ordered, letter written the company on this subject. (Grade Crossing Case No. 174.)

*Orders.*

Application of the Boston and Albany Railroad Company (leased to and operated by the New York Central and Hudson River Railroad Company) for a modification of the determination of this Board, under section 62 of the Railroad Law, dated July 19, 1904, as to the Cady's grade crossings of the railroad of said company in the town of Chatham, Columbia county. Ordered, said determination of July 19, 1904, modified as shown by office original modified determination on file. (Grade Crossing Case No. 494.)

Application of the Glenfield and Western Railroad Company, under section 55 of the Railroad Law, for permission to cease the operation of its railroad from January 1, 1905, to May 1, 1905. Granted. (Case No. 3262.)

Application of the town of Fine, St. Lawrence county, under section 61 of the Railroad Law, as to a highway in said town crossing the Carthage and Adirondack Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at or near Coffins mills, above, below or at the grade of said railroad. Determination as shown by office original determination on file that said highway shall cross the railroad at grade. (Grade Crossing Case No. 508.)

The Board adjourned.

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NEW YORK, DECEMBER 27, 1904.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

The minutes of the meeting of December 21 were read and approved.

*Complaints.*

Louis C. Lindeman against The Brooklyn Heights Railroad Company as to the running of open cars. operation of cars to Fort Hamilton and lack of shelter station at Fifth avenue and 68th street, Brooklyn. Report of the electrical expert, dated December 15, 1904. Ordered, copy sent company with letter of recommendation as shown by office original letter on file. (Case No. 3270.)

*Applications.*

In the matter of the application of the New York Central and Hudson River Railroad Company, under section 33 of the Railway Law, as to highway grade crossing sign boards, in which the Board has made a determination, dated May 10, 1904, and a supplemental determination, dated November 2, 1904, a letter was received from the company stating that the work of placing sign boards at 27 street crossings of the West Shore Railroad, lessor, in Utica, has been completed. Ordered filed. (Case No. 3107.)

*Reports.*

In the matter of the complaint of Theodore E. Busfield against the New York Central and Hudson River Railroad Company (West Shore Railroad, lessor) and the Boston and Maine Railroad (Fitchburg Railroad, lessor), as to station at Rotterdam Junction, a report, dated December 21, 1904, was received from the superintendent of the grade crossing bureau. Ordered filed. (Case No. 3111.)

Report of the inspector, dated December 19, 1904, as to a collision on The Delaware and Hudson Company's railroad near Worcester on December 1, 1904. Ordered, copy sent company. (Steam Case No. 58—1904.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of the West End Board of Trade of Brooklyn against The Brooklyn Heights Railroad Company as to operation of trains on the elevated lines of the company in the Thiad avenue section, the Eighty-sixth street and Bath avenue line and the Eighty-sixth street and fifth avenue line. Ordered filed. (Case No. 3253.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of Allied Board of Trade and Tax Payers' Association of Brooklyn, New York city, against The Brooklyn Heights Railroad Company and the Brooklyn, Queens County and Suburban Railroad Company as to service rendered the public on the Broadway and other surface lines and on the Broadway and other elevated lines. Ordered filed. (Case No. 3256.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of the Twenty-eighth Ward Board of Trade, Brooklyn, New York city, against The Brooklyn Heights Railroad Company, in relation to operation of cars and trains on the Broadway surface lines and the Lexington avenue elevated line. Ordered filed. (Case No. 3254.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of Winant V. P. Bradley against The Brooklyn Heights Railroad Company as to operation of passenger cars on its Reid avenue line. Ordered filed. (Case No. 3243.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of Christopher Clarke against the New York and Queens County Railway Company as to service rendered the public between Flushing and Jamaica. Ordered copy sent company with letter of recommendation as shown by office original letter on file. (Case No. 3222.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of A. F. Wise against The Brooklyn Heights Railroad Company, Fifth avenue elevated line, as to compliance by the company with the recommendations of the Board. Ordered filed. (Case No. 3170.)

Report of the electrical expert, dated December 15, 1904, in the matter of the complaint of the West End Board of Trade of Brooklyn against The Brooklyn Heights Railroad Company as to service rendered the public on its Fifth avenue elevated line. Ordered filed. (Case No. 3244.)

Report of the electrical expert, dated December 15, 1904, as to recommendations of this Board contained in a report, dated February 3, 1904, as to operating conditions on The Brooklyn Heights Railroad. Ordered filed. (Case No. 2796.)

Report of the electrical expert, dated December 21, 1904, as to compliance by the Interborough Rapid Transit Company with recommendations of this Board as to the Manhattan Railway. Ordered filed. (Case No. 3216.)

Report of the electrical expert, dated December 21, 1904, as to compliance by the Long Island Electric Railway Company with recommendations of this Board as to protection at grade crossings of its railroad and the Long Island Railroad. Ordered filed. (Case No. 3202.)

Report of the electrical expert, dated December 15, 1904, in the complaint of E. Robertson against The Brooklyn Heights Railroad Company as to protection at grade crossing at Thirty-ninth street and New Utrecht avenue, Brooklyn. Ordered filed. (Case No. 3169.)

Report of the electrical expert, dated December 21, 1904, in the matter of recommendations of this Board as to protection at grade crossings of the New York and Queens County Railway and the Long Island Railroad. Ordered filed. (Case No. 3199.)

Report of the electrical expert, dated December 21, 1904, to the effect that the Tarrytown, White Plains and Mamaroneck Railway (electric) has not complied with the direction of the Board, under section 36 of the Railroad Law, as to derailing switches in its railway interlocked with home and distant signals on the steam railroad at the point in Railroad avenue, White Plains, where its railway crosses the New York and Harlem Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company on its Sixth avenue line. Ordered filed. (Case No. 3151.) No. 2229.)

Report of the electrical expert, dated December 21, 1904, as to compliance by the former Ossining Electric Railway (now Westchester Traction Company) with recommendations of this Board as to its physical condition. Ordered letter of recommendation written the Westchester Traction Company, as shown by office original letter on file. (Case No. 2227.)

Report of the electrical expert, dated December 15, 1904, in relation to protection at grade crossings of The Brooklyn Heights Railroad and the Long

Island Railroad. See letter of recommendation of the Board of August 8, 1904. Ordered letter written the company, as shown by copy on file. (Miscellaneous Brooklyn City and Brooklyn Heights Crossing Case.)

Report of the electrical expert, dated December 21, 1904, as to letter from L. G. Callanan as to the running of cars by the New York City Railway Company on its Sixth avenue line. Ordered filed. (Case No. 3151.)

Report of the electrical expert, dated December 21, 1904, as to the installation of an additional power unit by the Long Island Electric Railway Company and as to new cars ordered by said company. Ordered filed. (Case No. 3202.)

Report of the electrical expert, dated December 21, 1904, in the matter of operating rules adopted by the Rochester and Eastern Rapid Railway Company, in compliance with recommendations of this Board. Ordered filed. (Street Case No. 36—1904.)

Report of the electrical expert, dated December 15, 1904, as to recommendations of this Board as to the placing of gates at a crossing of Kings highway and the Prospect Park and Coney Island Railroad (operated by The Brooklyn Heights Railroad Company). Ordered filed. (Steam Case No. 45—1904.)

Report of the electrical expert, dated December 21, 1904, as to an accident on the International Railway February 8, 1904, at the corner of Main and Jefferson streets, Buffalo. Ordered copy sent company. (Street Case No. 7—1904.)

Report of the electrical expert, dated December 21, 1904, as to collision between cars on the New York City Railway, March 29, 1904. Ordered copy sent company. (Street Case No. 10—1904.)

Report of the electrical expert, dated December 21, 1904, as to collision between cars on The Brooklyn Heights Railroad, November 22, 1904, on Liberty avenue near Rockaway avenue. Ordered copy sent company. (Street Case No. 49—1904.)

Report of the electrical expert, dated December 21, 1904, as to a head-on collision between cars on the New York and Queens County Railway, October 25, 1904, near the corner of Sanford and Jamaica avenues, Flushing. Ordered copy sent company. (Street Case No. 44—1904.)

Report of the electrical expert, dated December 21, 1904, as to a rear-end collision between cars on the Third Avenue Railroad, at Ninety-ninth street, New York city, March 11, 1904. Ordered copy sent company. (Street Case No. 9—1904.)

Report of the electrical expert, dated December 21, 1904, as to derailment of a car on the Union Railway, December 12, 1904, on Burnside avenue, New York city. Ordered copy sent company with a letter of recommendation, as shown by office original letter on file. (Street Case No. 50—1904.)

Report of the electrical expert, dated December 21, 1904, as to rear-end collision between cars on the Long Island Electric Railway, October 26, 1904. Ordered copy sent company. (Street Case No. 45—1904.)

Report of the electrical expert, dated December 21, 1904, as to a rear-end collision between trains on the Fifth avenue elevated line of The Brooklyn Heights Railroad, November 16, 1904. Ordered copy sent company. (Street Case No. 46½—1904.)

Report of the electrical expert, dated December 21, 1904, as to a rear-end collision November 18, 1904, on the elevated line of The Brooklyn Heights Railroad Company near the Crescent street station. Ordered copy sent company. (Street Case No. 47—1904.)

#### *Crossings.*

Reports from the superintendent of the grade crossing bureau, dated December 15, 1904, in Grade Crossing Cases Nos. 416, 390, 369, 470, 396, 348 and 285 were submitted to the Board. See minutes of November 30, 1904.

#### *Orders.*

In the matter of the recommendations of this Board as to the installation of derailing switches in the electric railway at points where the steam and elec-

tric divisions of the Fonda, Johnstown and Gloversville Railroad cross at grade, the application of the company that the Board withdraw its recommendations as to these derails was ordered refused. (Case No. 3215.)

*Bill Approved.*

The following bill was approved:

*General Expenses.*

H. L. Murdock (Steno. services) .....	\$32 26
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The Board adjourned.

ALBANY, JANUARY 3, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Baker.

*Complaints.*

An opinion, dated December 31, 1904, was received from the Attorney-General in response to a request from this Board as to the jurisdiction of the Board over the railroad subway in New York city, operated by the Interborough Rapid Transit Company. Ordered filed. (Case No. 3263.)

H. D. Dumont, B. E. Martin and others against the Brooklyn Heights Railroad Company as to service rendered the public on what is known as the Fulton Street, Kings County, Elevated line, Brooklyn. This case was closed on the minutes of November 30, 1904, and is now reopened. Letter, dated December 14, 1904, received from Mr. Dumont, reiterating the complaint. The electrical expert is to make a report in this matter. (Case No. 3232.)

Allied Civic Associations of the Fourth Ward, Borough of Queens, New York city, against The Brooklyn Heights Railroad Company as to alleged inadequate transit facilities furnished the public by said company on Jamaica avenue, borough of Queens. Copy sent company. The electrical expert has been ordered to make a report in this matter. A letter dated December 31, 1904, was received from the West End Citizens' League making a similar complaint. Ordered filed. (Case No. 3271.)

W. C. Coleman Company of Setauket against the Long Island Railroad Company as to receipting for freight before delivery. Copy sent company. (Case No. 3272.)

In the matter of the complaint of L. J. Dolan as to bridge spanning the Hudson river in the town of Moreau, over which cars of the Hudson Valley Railway operate, a report, dated December 16, 1904, was received from the superintendent of the grade crossing bureau as to the condition of the bridge. Closed. (Case No. 3034.)

West End Board of Trade of Brooklyn, New York city, against the Brooklyn Heights Railroad Company, as to operation of trains on the elevated lines of the company in the Third avenue section, the Eighty-sixth street and Bath avenue line and the Eighty-sixth street and Fifth avenue line. Answer of company received. Copy sent complainants. Closed. (Case No. 3253.)

Allied Board of Trade and Tax Payers' Association of Brooklyn, New York city, against The Brooklyn Heights Railroad Company and the Brooklyn, Queens County and Suburban Railroad Company as to service rendered the public on the Broadway and other surface lines and on the Broadway and other elevated lines. Answer of company received. Copy sent complainants. Letter dated December 13, 1904, received from complainants. Closed. (Case No. 3256.)

Twenty-eighth Ward Board of Trade of Brooklyn, New York city, against The Brooklyn Heights Railroad Company in relation to operation of cars and trains on the Broadway surface line and the Lexington avenue elevated line. Answer of company received. Copy sent complainants. Closed. (Case No. 3254.)

Winant V. P. Bradley against the Brooklyn Heights Railroad Company as to operation of passenger cars on its Reid avenue line. Answer of company received. Copy sent complainant. Reply of complainant received. Closed. (Case No. 3243.)

Manufacturers' Association of New York against the Brooklyn Heights Railroad Company as to protection of the electric third rail on its elevated lines. This case was closed on the minutes of November 30, 1904, and is now reopened. Letter dated December 27, 1904, received from complainants. Referred to Commissioner Baker. (Case No. 3039.)

Republican Union of the Twenty-eighth Assembly District, New York city, against the Interborough Rapid Transit Company as to service rendered the public on the Second avenue and Third avenue lines of the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company). Copy sent company. The electrical expert has been instructed to make a report in this matter. (Case No. 3268.)

J. J. Ellis against the Erie Railroad Company as to there not being a fire in its station at Avoca, Steuben county, during the fall. Answer of company received. Copy sent complainant. Closed. (Case No. 3258.)

Anna M. Raule (Mrs. Martin Walker) against the New York Central and Hudson River Railroad Company as to lack of station at Sherman Park on its New York and Putnam division. Report of inspector, dated December 10, 1904, received. Closed. (Case No. 3062.)

W. C. Hutchins against the Glenfield and Western Railroad Company as to service rendered the public. Report, dated December 1, 1904, received from the inspector. Ordered filed. This case was closed on December 14, 1903, and is not reopened. (Case No. 2995.)

Howard Thornton, of Newburgh, against the Erie Railroad Company as to its passenger train service between Greycourt and Newburgh. Copy sent company. (Case No. 3265.)

Board of Trade of Avon against the Pennsylvania Railroad Company (Western New York and Pennsylvania Railway, lessor) as to station called Avon. Copy sent company. (Case No. 3261.)

Christopher Clarke against the New York and Queens County Railway Company as to service rendered the public between Flushing and Jamaica. Letter, dated December 24, 1904, received from complainant. Ordered filed. (Case No. 3222.)

Thomas D. Lewis against the Delaware, Lackawanna and Western Railroad Company as to proposed crossing of its railroad by Leitch street in Fulton. Answer of company received. Ordered carried on file. (Case No. 3204.)

C. H. Turner against the New York and Ottawa Railroad Company relative to fires set from locomotives. Report, dated December 1, 1904, received from the inspector. Ordered filed. This case was closed on the minutes of June 14, 1904, and not reopened. (Case No. 3147.)

#### *Orders.*

Application of The Pittsburg, Shawmut and Northern Railroad Company, under section 60 of the Railroad Law, for a determination of the manner in which its single track railroad shall cross streets, avenues and highways in the counties of Allegany and Cattaraugus. Determination, as shown by office original determination on file. (Grade Crossing Case No. 502.)

The Board took a recess until 2 p. m.

#### **AFTER RECESS—2 P. M.**

The Board again met. Present, Commissioners Dunn and Baker.

#### *Applications.*

Application of the Buffalo, Rochester and Pittsburgh Railway Company for approval of an increase of its capital stock from \$15,000,000 to \$18,000,000. Ordered hearing set for Albany, Wednesday, January 11, 1905, at 11:30 a. m. (Case No. 3269.)

In the matter of the application of the New York Central and Hudson River Railroad Company, under section 68 of the Railroad Law, as to a switch track crossing the electric track of the Fonda, Johnstown and Gloversville Railroad on West Main street, Amsterdam, in which matter a determination, dated May 10, 1904, was made by this Board, a letter, dated December 8, 1904, was received from the company stating that this crossing was not to be constructed. Ordered filed. (Case No. 3090.)

In the matter of the supplemental determination of this Board, dated November 2, 1904, as to sign-boards at certain crossings of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) in Utica, a letter, dated December 5, 1904, was received from the company stating that the signs would be placed. Ordered filed. (Case No. 3107.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated June 30, 1903, as to the Battenkill Railway (now the Greenwich and Johnsonville Railway) crossing at grade the Hudson Valley Railway at Thomson, a letter, dated December 13, 1904, was received from the company as to signals at this crossing. Ordered filed. (Case No. 2881.)

#### *Complaints.*

Letters dated December 8 and 16, 1904, from The Peoples Security Company of New York city, were received as to transfers between the Union Railway and Interborough Rapid Transit Company. Ordered letter written complainant, as shown by copy on file. (This has not been made a case.)

S. W. Turner against the Interborough Rapid Transit Company (Manhattan Railway division) as to the One Hundred and Sixteenth street and Eighth avenue station and as to insufficient train service on the Third avenue line. Ordered that the electrical expert make a report in the matter. (Case No. 3275.)

John G. Clark, of Stapleton, Staten Island, against the Staten Island Rapid Transit Railway Company in relation to change of location of station of said company known as Clifton. Ordered that the electrical expert make a report in the matter. (Case No. 3276.)

#### *Reports.*

Report of the inspector, dated December 27, 1904, as to a rear collision between freight trains on the Delaware, Lackawanna and Western Railroad near Bath, December 11, 1904. Ordered copy sent company. (Steam Case No. 60—1904.)

In the matter of the recommendations of this Board as to crossings at grade by the railroad of the Black River Traction Company of the Rome, Watertown and Ogdensburg division of the New York Central and Hudson River Railroad was received from the company. Ordered filed. Barnes' Case No. 19—1902.)

Report of the superintendent of the grade crossing bureau, dated December 19, 1904, in relation to collision between a passenger train and a light engine on the New York Central and Hudson River Railroad at Rensselaer, October 14, 1904. Ordered copy sent company. (Steam Case No. 54—1904.)

Report of the inspector, dated December 15, 1904, as to accidents (two) on the New York Central and Hudson River Railroad east of Little Falls, December 5, 1904. Ordered copy sent company. (Steam Case No. 59—1904.)

Report of the inspector, dated November 30, 1904, as to a head-on collision between freight trains on the Pennsylvania Railroad (Western New York and Pennsylvania Railway, lessor) near Franklinville, September 28, 1904. Ordered copy sent company. (Steam Case No. 53—1904.)

Report of the superintendent of the grade crossing bureau, dated December 2, 1904, to the effect that the location of station on the Long Island Railroad at Hewlett has not been changed, as consented to by this Board. Ordered filed. (Case No. 2584.)

Report of the inspector of grade crossings, dated December 5, 1904, to the effect that the Bilsborrow station stop for passenger trains on the

Pennsylvania division of the New York Central and Hudson River Railroad has been changed, as consented to by this Board. Ordered filed. (Case No. 3149.)

Report of the inspector of grade crossings, dated November 30, 1904, as to bridge over the Rutland Railroad near Berlin—complaint of William D. Greene and others. Ordered filed. (Case No. 2767.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated December 8, 1903, as to the Rochester and Eastern Rapid Railway (street surface, electric) crossing at grade in Saltonstall street in Canandaigua the Northern Central Railroad (steam), in which a report, dated November 16, 1904, was received from the inspector of grade crossings, a letter, dated December 13, 1904, was received from the company. Ordered filed. (Case No. 3024.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated June 30, 1903, as to the Union Railway crossing at grade the Port Morris branch of the New York Central and Hudson River Railroad near One Hundred and Forty-ninth street on St. Ann's avenue, New York city, a report, dated December 13, 1904, was received from the inspector of grade crossings to the effect that this crossing has not yet been made. Ordered filed. (Case No. 2920.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated September 13, 1904, as to the Olean Street Railway crossing overhead the Pennsylvania and the Pittsburgh, Shawmut and Northern railroads in East State street, Olean, a report, dated December 17, 1904, was received from the inspector to the effect that this overhead crossing is completed. Ordered filed. (Case No. 3194.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated November 6, 1903, as to a second track of the Utica and Mohawk Valley Railway crossing at grade the Delaware, Lackawanna and Western Railroad on Genesee street, in the town of New Hartford, Oneida county, a report, dated December 17, 1904, was received from the inspector to the effect that this second track has not been constructed. Ordered filed. (Case No. 3010.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated July 19, 1904, as to the Chautauqua Traction Company's railway (street surface, electric) crossing at grade temporarily the steam railroad operated by the Pennsylvania Railroad Company in the Chautauqua road in the village of Mayville, a report, dated December 17, 1904, was received from the inspector stating that this crossing is constructed and recommending that the copper trough on the trolley wire should be extended. Ordered letter written company in relation to this copper trough, as shown by office original letter on file. (Case No. 3195.)

In the matter of the complaint of the village of Falconer as to station at said place of the Lake Shore and Michigan Southern (Dunkirk, Allegheny Valley and Pittsburgh Railroad, and Erie railroad companies, which case is closed, a report, dated December 17, 1904, was received from the inspector to the effect that no station has been erected by either of the companies. Ordered filed. (Case No. 2896.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated February 5, 1903, a report, dated December 17, 1904, was received from the inspector to the effect that the Oneida Railway Company has not constructed its railroad in the Lenox avenue, Oneida, undercrossing of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company). Ordered filed. (Case No. 2782.)

In the matter of the substitution of a steel rail guardrail in place of the wooden outside guardrail along the Niagara Gorge Railroad, a letter, dated December 27, 1904, was received from the company. Ordered letter written company, as shown by copy on file. (Case No. 2279.)

The Board considered and adopted the annual report.

The Board adjourned.



ALBANY, JANUARY 4, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Petition of the town board of the town of Canadea, Allegany county (concurrent in by the Buffalo and Susquehanna Railway Company), under section 60 of the Railroad Law, for a modification of the determination of this Board, under said section, dated June 14, 1904, so that the Buffalo and Susquehanna Railway shall cross at grade the highway in said town known as the Crawford Creek road instead of over the grade of said highway as set forth in said determination. Walter P. Cooke for the Buffalo and Susquehanna Railway Company; no one appeared for the town. After hearing arguments the hearing was closed. Mr. Cooke is to file with this Board a sketch showing the conditions that would surround the crossing and its approaches if made at grade and the affidavit of an engineer setting forth such a description. (Grade Crossing Case No. 479.)

The hearings in the matter of the applications of the Ithaca-Cortland Traction Company (street surface electric), under section 68 of the Railroad Law, as to crossing the Lehigh Valley Railroad (steam) which were to have taken place to-day, did not take place but were adjourned by consent of counsel until 10 a. m. Wednesday, January 11, 1905. This date was subsequently changed to January 12, 1905. (Cases Nos. 3127, 3128, 3129 and 3130.)

*Bills Approved.*

The following bills were approved:

*General Expenses.*

Western Union Telegraph Company.....	\$9 33
Postal Telegraph-Cable Company.....	2 24
The Stone Press Copying Bath Company.....	6 60
Brandow Printing Company.....	10 00
Great Bear Spring Company.....	2 10
The Smith-Premier Typewriter Company (October).....	16 87
The Smith-Premier Typewriter Company (November).....	24 37
National Express Company.....	12 73
American Express Company.....	10 22
Frank N. Sisson.....	1 40
Thomas J. Cowell.....	8 50
Evening Union Company.....	2 50
John J. Farley (expenses).....	16 00
Karl F. Colson (expenses).....	6 00
New York Telephone Company, New York city.....	19 35
E. A. Parker (November) New York city.....	2 32
"Klips" E. C. Cuyler, Secretary-Treasurer.....	25 00
J. D. Shultz (expenses).....	30 50
Henry C. Parsons.....	10 64
E. A. Parker (December) New York city.....	2 63
C. E. Argersinger, P. M.....	4 00
Charles R. Barnes (expenses).....	100 00
	<hr/>
	\$323 51

*Grade Crossing Expenses.*

A. H. Sutermeister (expenses).....	\$23 35
James E. Brazee (expenses).....	35 11
	<hr/>
	\$58 46

*Grade Crossings—Construction Account.*

The Delaware and Hudson Company.....	\$29,687 10
For the State's proportion of the cost of changing the Main street grade crossing of the Albany and Susquehanna Railroad (leased to and operated by The Delaware and Hudson Company) in the village of Oneonta, to an over crossing, in pursuance of a determination of the Board of Railroad Commissioners, under section 62 of the Railroad Law, dated September 11, 1901.	
The Delaware and Hudson Company.....	3,529 34
For the State's proportion of the cost of changing "Kilmer's" grade crossing of the Albany and Susquehanna Railroad (leased to and operated by the Delaware and Hudson Company), at Slingerland, in the town of Bethlehem, Albany county, to an over crossing, in pursuance of a determination of the Board of Railroad Commissioners, under section 62 of the Railroad Law, dated October 3, 1902.	
Pennsylvania Railroad Company.....	3,617 24
For the State's proportion of the cost of changing the Main road highway grade crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Co.), in the town of Portland, Chautauqua county, to an over crossing, in pursuance of a determination of the Board of Railroad Commissioners, under section 62 of the Railroad Law, dated November 8, 1901.	

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\$36,833 68

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The Board adjourned.

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ALBANY, JANUARY 12, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

The minutes of the meetings of December 27, 1904, and January 3 and 4, 1905, were read and approved.

*Hearings.*

Application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface electric) shall cross the Auburn branch of the Lehigh Valley Railroad (steam) and the Lehigh Valley Railroad in the village of Freeville (one crossing) above, below or at the grade of said steam railroads, it being proposed that the crossing shall be above grade. George E. Monroe for the applicant; Diven & Diven and J. F. Schaperkotter for the Lehigh Valley Railroad Company, in opposition. After hearing evidence and arguments Mr. Diven made the point that the point of proposed crossing was on a proposed line for the applicant's railroad other than that stated in its articles of association and that the applicant had not lawfully changed its line; the applicant admitted this and withdrew its application, stating that it would take steps to lawfully change its route and renew the application. (Case No. 3130.)

Application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface electric) shall cross the Auburn branch of the Lehigh Valley Railroad (steam) at a point on the main highway between the vil-

lage of Freeville and the settlement known as Willow Glen, above, below or at the grade of said steam railroad, it being proposed that the crossing be above grade. George E. Monroe for the applicant; Diven & Diven and J. F. Schaperkotter for the Lehigh Valley Railroad Company, in opposition. Without the hearing of arguments or taking of evidence this application was withdrawn for the same reasons as the preceding application. (Case No. 3128.)

Application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface electric) shall cross the Auburn branch of the Lehigh Valley Railroad (steam) at or near the intersection of West Main street and Rochester street in the village of Dryden above, below or at the grade of said steam railroad, the applicant asking that the crossing be made at grade. George E. Monroe for the applicant; Diven & Diven and J. F. Schaperkotter for the Lehigh Valley Railroad Company, in opposition. After hearing evidence and arguments the hearing was closed. (Case No. 3127.)

Application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface electric) shall cross the Lehigh Valley Railroad (steam) at a point on the main highway between the village of Dryden and a settlement known as McLean above, below or at the grade of said steam railroad, it being proposed (in the testimony of the applicant's engineer at this hearing) that the crossing be above grade. George E. Monroe for the applicant; Diven & Diven and J. F. Schaperkotter for the Lehigh Valley Railroad Company, in opposition. After hearing evidence and arguments this application was withdrawn for the same reasons as the first application above. (Case No. 3129.)

The Ithaca-Cortland Traction Company is to make new applications in the case of the three above named withdrawn and a hearing on the new applications will be given by the Board in Albany, 10 a. m., Wednesday, February 15, 1905.

Application of the Buffalo, Rochester and Pittsburgh Railway Company for approval of an increase of its capital stock from \$15,000,000 to \$18,000,000. Adrian Iselin, Jr., for the applicant. After hearing arguments the hearing was closed. (Case No. 3269.)

Application of the Eastern New York Railroad Company for approval of an increase of its capital stock from \$100,000 to \$1,750,000 and for consent to the issue of a first mortgage for \$1,750,000, both applications being contained in one petition. T. F. Barrett for applicant. After hearing arguments the hearing was closed. (Case No. 3278.)

#### *Applications.*

An order of the Appellate Division of the Supreme Court, First Department, was served on the Board directing it to issue a certificate to the New York City Interborough Railway Company that the provisions of section 59 of the Railroad Law have been complied with and that public convenience and a necessity require the construction of so much of the railway of said company as appears in the office original certificate on file. Two letters dated January 11, 1905, from Guthrie, Cravath & Henderson, attorneys, Union Railway Company, on this subject were received. Ordered filed. (Case No. 2911.)

#### *Orders.*

Application of the Buffalo, Rochester and Pittsburgh Railway Company for approval of an increase of its capital stock from \$15,000,000 to \$18,000,000. Ordered approved said application for increase of capital stock on condition that but \$1,500,000 of said increase of stock be issued under this approval and that the remaining \$1,500,000 of said increase of stock or any part thereof shall not be issued until after further application is made to this Board by said company for approval of the issuance of said \$1,500,000 of said increase of stock or any part thereof and such approval of this Board has been received to the issuance of said \$1,500,000 of said increase of stock or any part thereof. (Case No. 3269.)

Application of the Eastern New York Railroad Company for approval of an increase of its capital stock from \$100,000 to \$1,750,000 and for consent to the issue of a first mortgage for \$1,750,000, both applications being contained in one petition. Ordered approved said application for increase of capital stock on condition that but \$400,000 of said increase of stock be issued under this approval and that the remaining \$1,250,000 of said increase of stock or any part thereof shall not be issued until after further application is made to this Board by said company for approval of the issuance of said \$1,250,000 of said increase of stock or any part thereof and such approval of this Board has been received to the issuance of said \$1,250,000 of said increase of stock or any part thereof. Also ordered, that the said first mortgage for \$1,750,000 be consented to on condition that but \$500,000 bonds shall be issued thereunder, under this consent, and on condition that said company before issuing the remaining \$1,250,000 bonds or any part thereof under said mortgage shall apply for and secure the further consent of this Board to such issuance of said \$1,250,000 bonds or any part thereof. (Case No. 3278.)

By direction of the Appellate Division of the Supreme Court, First Department, it was ordered that a certificate be issued to the New York City Interborough Railway Company that the provisions of section 59 of the Railroad Law have been complied with by said company and that public convenience and a necessity require the construction of so much of the railway of said company as appears by the office original certificate on file. (Case No. 2911.)

A recess was taken until 2 p. m.

#### AFTER RECESS—2 P. M.

The Board again met. All the Commissioners present.

#### *Complaints.*

Rev. James Biram of Woodhaven against the Brooklyn Heights Railroad Company as to operation of cars of said company to Woodhaven. Copy sent company. The electrical expert has been instructed to make a report in this matter. (Case No. 3281.)

Republican Union of the Twenty-eighth Assembly District, New York city, against the Interborough Rapid Transit Company as to service rendered the public on the Second avenue and Third avenue lines of the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company). Answer of company received. Copy sent complainants. The electrical expert has been instructed to make a report in this matter. (Case No. 3268.)

John W. Gould against the Interborough Rapid Transit Company (Manhattan Railway division) as to the non-heating of Ninth avenue southbound express trains between 8 and 9 a. m. Also as to taking off of trains. The electrical expert has been instructed to make a report in this matter. (Case No. 3280.)

Mrs. Ryerson of Brooklyn, New York city, against the Brooklyn Heights Railroad Company as to the running of additional cars to Cypress Hills on the Fulton street route. Copy sent company. Answer of company received. Copy sent complainant. The electrical expert has been instructed to make a report in this matter. (Case No. 3274.)

Board of Trade of Avon against the Pennsylvania Railroad Company (Western New York and Pennsylvania Railway, lessor,) as to name of station called Avon. Answer of company received. Copy sent complainants. (Case No. 3261.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to freight rate on shipment of live stock from Carmel on the New York and Putnam division of the New York Central and Hudson River Railroad to New York city. Answer of company received. Ordered letter written company as shown by copy on file. (Case No. 3273.)

John B. Rose against the New York Central and Hudson River Railroad Company (West Shore Railroad, lessor,) as to station at Roseton on the River division of the West Shore Railroad. Letter dated December 24, 1904, received from the company. Ordered copy sent complainant. (Case No. 2890.)

*Applications.*

Application of the Syracuse and South Bay Railway Company (street surface) to reopen an application by it for a certificate under section 59 of the Railroad Law, which application was ordered closed on the minutes of February 5, 1903, the applicant not having proceeded in the matter. When this case was closed the applicant was notified that it could apply to have it reopened. In this application an amended petition dated January 11, 1905, is filed asking for a certificate under section 59 to an amended route. Ordered hearing on this amended application set for Thursday, January 26, 1905, 10 a. m., at the office of this Board in Albany. (Case No. 2262.)

Application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law. Ordered carried on file. (Case No. 3277.)

Application of the Ithaca-Cortland Traction Company for consent to the issue of a first mortgage for \$775,000. Ordered hearing set for Thursday, January 26, 1905, 10 a. m., at the office of this Board in Albany. (Case No. 3283.)

*Reports.*

Report of the superintendent of the grade crossing bureau dated January 9, 1905, as to head-on collision between an express and a passenger car on the Hudson Valley Railway, December 20, 1904, about a quarter of a mile north of Stillwater. Ordered copy sent company. (Street Case No. 53—1904.)

Report of the inspector dated January 7, 1905, at to a collision between a passenger train and a switch engine on the New York Central and Hudson River Railroad, 4 p. m., December 21, 1904, about 800 feet west of the Syracuse passenger station. Ordered copy sent company, with letter of recommendation as shown by office original letter on file. (Steam Case No. 64—1904.)

Report of the electrical expert, dated December 31, 1904, as to a collision between a New York, Ontario and Western Railway train and a car of the Port Jervis Electric Light, Power, Gas and Railroad Company at a point in Ball street, Port Jervis, where said railroads cross at grade. The matter of the failure of the Port Jervis Electric Light, Power, Gas and Railroad Company to comply with the recommendation of this Board as to derailing switches at this crossing has been ordered referred to the Attorney-General. (Street Case No. 42—1904.)

Report of the inspector, dated January 7, 1905, as to a head-on collision between freight trains on the New York, Chicago and St. Louis Railroad near Dunkirk, December 10, 1904. Ordered copy sent company. (Steam Case No. 61—1904.)

In the matter of the recommendations of this Board contained in a letter to the company, dated September 15, 1904, growing out of a report of the inspector, dated August 15, 1904, as to the physical condition of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) in this State, a letter, dated December 2, 1904, was received from the company as to compliance with the recommendations. Ordered filed. (No. 13—1904.)

In the matter of the recommendations of this Board contained in a letter to the company, dated December 7, 1904, growing out of a report of the inspector, dated November 7, 1904, as to the physical condition of the portion of the Northern Central Railway in this State, a letter, dated December 9, 1904, was received from the company as to compliance with the recommendations. Ordered filed. (No. 23—1904.)

In the matter of the recommendations of this Board contained in a letter to the company, dated July 29, 1904, growing out of a report of the inspector, dated June 30, 1904, as to the physical condition of the railroads of The Delaware and Hudson Company in this State, a letter, dated November 30, 1904, was received from the company as to compliance with the recommendations. Ordered filed and that the inspector consult with the general superintendent of the company as to inside guard rails on bridges. (No. 6—1904.)

Supplemental report of the inspector, dated December 1, 1904, as to timber trestles on the Raquette Lake Railway (operated by the New York Central

and Hudson River Railroad Company). Ordered copy sent company. (No. 21—1904.)

Report of the electrical exeprt, dated December 31, 1904, as to there not being derailing switches as recommended by this Board at the crossing at grade of the Port Jervis Electric Light, Power, Gas and Railroad Company's railroad and the Port Jervis, Monticello and Summitville Railroad (leased to and operated by the New York, Ontario and Western Railway Company) at Ball street in Port Jervis. Ordered that the matter of failure to install these derailing switches be turned over to the Attorney-General, see accident case No. 42—1904, referred to in these minutes. (Case No. 2380.)

Report of the superintendent of the grade crossing bureau, dated January 9, 1905, as to the crossing at grade of Y tracks of The Pittsburg, Shawmut and Northern Railroad by the Olean Street, Railway at Ceres, determination in which, under section 68 of the Railroad Law, dated October 23, 1902, has been made by this Board. Ordered filed. (Case No. 2678.)

#### *Crossings.*

Petition of the town board of the town of Caneadea, Allegany county (concurrent in by the Buffalo and Susquehanna Railway Company), under section 60 of the Railroad Law, for a modification of the determination of this Board, under said section, dated June 14, 1904, so that the Buffalo and Susquehanna Railway shall cross at grade the highway in said town known as the Crawford Creek road instead of over the grade of said highway as set forth in said determination. Letter, dated January 9, 1905, was received from Bissell, Carey & Cooke, attorneys for the company, accompanied by an affidavit of E. P. Lupfer and a blue-print plan showing the conditions at the proposed crossing at grade. Ordered filed. (Grade Crossing Case No. 479.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated April 15, 1902, as to changes of highways and crossings of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), the New York Central and Hudson River Railroad and the Oswego and Syracuse Railroad (leased to and operated by the Delaware, Lackawanna and Western Railroad Company) in the town of Geddes, Onondaga county, an overcrossing has been constructed, a letter, dated January 4, 1905, was received from the New York Central and Hudson River Railroad Company as to the construction of corrugated iron shields on the bridge. Ordered the company be notified that the Board does not approve of the construction of these shields. Letter, dated December 13, 1904, was received from the New York Central and Hudson River Railroad Company and letter, dated December 20, 1904, was received from the Delaware, Lackawanna and Western Railroad Company as to the apportionment between said companies of the fifty per centum of the expense to be borne by said companies. Ordered that the expense to be borne, under section 65 of the Railroad Law, by the companies be divided between them on the basis of length of right of way crossed of each company to total length of bridge. (Grade Crossing Case No. 174.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, at to changing the Broadway grade crossing of the New York and Putnam Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) near Van Cortlandt station, New York city, to an undercrossing of said railroad, detail plans of the substructural and superstructural work were submitted to the Board. Ordered said detail plans approved. (Grade Crossing Case No. 503.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a detail plan for the southeast retaining wall at State street was submitted to the Board by the New York Central and Hudson River Railroad Company. Ordered said detail plan approved. A report on this plan, dated January 14, 1905, was made by the superintendent of the grade crossing bureau.

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, and determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets and Westinghouse avenue and Edison avenue grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to under-crossings of the railroad, proposals of contractors for the bridges at Westinghouse and Edison avenues, Pine, Fonda and Nott streets were submitted to the Board by The Delaware and Hudson Company, together with a report thereon, dated January 9, 1905, by the superintendent of the grade crossing bureau. Ordered approved the proposal of the American Bridge Company for said bridges, viz., 2.6 cents per pound f. o. b. cars Schenectady. The Board also approved detail plans for these bridges following the detail plans for the Westinghouse avenue and Edison avenue bridges which were submitted to the Board with proposals of contractors. (Grade Crossing Cases Nos. 369 and 390.)

In the matter of the petition of the town board of the town of Reading, Schuyler county, under section 62 of the Railroad Law, as to changing a grade crossing of The Syracuse, Geneva and Corning Railway (leased to and operated by the New York Central and Hudson River Railroad Company) and a highway leading from Reading Center to the village of Watkins at a point in said town known as Big Hollow, Big Gully or Irelandville Gully from grade to an undercrossing, a letter, dated November 19, 1904, was received from the attorney for the town. Ordered filed. (Grade Crossing Case No. 515.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to closing and discontinuing a grade crossing of The Syracuse, Geneva and Corning Railway (leased to and operated by the New York Central and Hudson River Railroad Company) at a point known as Bolt's crossing, about 1.2 miles north of Watkins in the town of Reading, Schuyler county, and the construction of a new piece of highway to an existing grade crossing of said railroad known as No. 64. Ordered filed. (Grade Crossing Case No. 520.)

A letter, dated December 19, 1904, was received from the Board of Estimate and Apportionment of New York city, together with a copy of a resolution of said board as to Twelfth avenue crossing the New York, Brooklyn and Manhattan Beach line of the Long Island Railroad and the Sea Beach line of the Brooklyn Heights Railroad Company between Sixty-first and Sixty-second streets in the borough of Brooklyn. A letter, dated December 20, 1904, was written the Board of Estimate and Apportionment as shown by copy on file. (Grade Crossing Case No. 521.)

#### Orders.

Petition of the town board of the town of Caneadea, Allegany county (con-curred in by the Buffalo and Susquehanna Railway Company), under section 60 of the Railroad Law, for a modification of the determination of this Board, under said section, dated June 14, 1904, so that the Buffalo and Susquehanna Railway shall cross at grade the highway in said town known as the Crawford Creek road instead of over the grade of said highway as set forth in said determination. Ordered that said determination be modified as shown by office original modified determination on file. (Grade Crossing Case No. 479.)

#### Bills Approved.

The following bills were approved:

#### General Expenses.

J. M. Dickey (expenses) .....	\$105 00
E. C. McEntee (expenses) .....	20 20
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	\$125 20
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The Board adjourned.

NEW YORK, JANUARY 25, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

*Hearings.*

Allied Civic Associations of the Fourth Ward, Borough of Queens, New York city (complaint joined in by the West End Citizens' League) against the Brooklyn Heights Railroad Company as to service rendered the public on Jamaica avenue. H. P. Engelhardt, president of the Allied Civic Associations; W. P. Beach, secretary of the Allied Civic Associations, also representing the West End Citizens' League; Michael Carter of the Jamaica Citizens' Association; T. S. Affleck, first vice-president of the Allied Civic Associations and a member of the Jamaica Citizens' Association; Frank Bennett of the West End League, appeared for complainants; E. W. Winter, president, D. S. Smith, general superintendent, and C. A. Collin, counsel, appeared for the company. After hearing arguments a recess was taken until 2:30 p. m. (Case No. 3271.)

AFTER RECESS—2:30 P. M.

The Board again met. Present, Commissioners Baker and Dickey.

*Hearings.*

The hearing in the matter of the complaint of the Allied Civic Associations of the Fourth Ward, Borough of Queens, New York city (complaint joined in by the West End Citizens' League) was resumed. Appearances as in the morning, with the addition of George W. Bartholf for complainants. After hearing arguments further the hearing was adjourned until Wednesday, February 1, 1905, 10 a. m., room No. 27, Court House, Brooklyn. (Case No. 3271.)

The Board adjourned.

ALBANY, JANUARY 26, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Application of the Ithaca-Cortland Traction Company for consent to the issue of a first mortgage for \$775,000. George E. Monroe for the applicant. After hearing arguments the hearing was closed. (Case No. 3283.)

Application of the Hamburg Railway Company for approval of an increase of its capital stock from \$200,000 to \$350,000. D. W. Allen for the applicant. After hearing arguments the hearing was closed. (Case No. 3290.)

Application of the Syracuse and South Bay Railway Company (street surface) for a certificate under section 59 of the Railroad Law, this application being on an amended petition, dated January 11, 1905, as to an amended route. William G. Tracy for the applicant; Frederick T. Pierson for the commissioner of highways of the town of Clay, in favor of the application; Gerard C. Thorpe, as highway commissioner of the town of Salina, in favor of the application; Smith Soule for the highway commissioner of the town of Cicero, in favor of the application; William L. Barnum for himself, in opposition; L. E. G. Morphy for the New York Central and Hudson River Railroad Company, as to a proposed crossing of its railroad by the applicant's railroad. After hearing arguments and marking of papers in evidence, the hearing was adjourned until Wednesday, February 8, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 2262.)

In the matter of the accounting and settlement of the cost of the Case's undercrossing of The Pittsburg, Shawmut and Northern Railroad in the town of Genesee, Allegany county, constructed in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated August 7, 1902. Frank Sullivan Smith and Frank S. Blair for the steam railroad; W. L.



Marcy for the town of Genesee and the Olean Street Railway Company, whose railroad is constructed in said undercrossing, objecting to the cost. The town of Genesee has approved the accounting and settlement. After hearing evidence and arguments Mr. Marcy, although not stating that he withdrew his opposition, virtually did so. (Grade Crossing Case No. 355.)

#### *Orders.*

Application of the Ithaca-Cortland Traction Company for consent to the issue of a first mortgage for \$775,000. Granted. (Case No. 3283. See Case No. 3058.)

Application of the Hamburg Railway Company for approval of an increase of its capital stock from \$200,000 to \$350,000. Granted. (Case No. 3290.)

On January 25, 1905, the Board again recommended to the Port Jervis Electric Light, Power, Gas and Railroad Company that it install derailling switches in its tracks on Ball street, Port Jervis, on each side of the crossing at grade by its railroad of the Port Jervis, Monticello and Summitville Railroad (steam), and recommended that these switches be installed and placed in operation on or before Friday, February 3, 1905. This matter has been referred to the Attorney-General. (Case No. 2380.)

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

Battery Place Realty Company.....	\$150 00
Wm. McNeilly (postage stamps).....	100 00
	<hr/>
	\$250 00
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The Board adjourned.

#### **ALBANY, JANUARY 27, 1905.**

The hearing in the matter of the application of the Auburn and Northern Electric Railroad Company (street surface) for a certificate under section 59 of the Railroad Law, which was to have been held in Auburn to-day, was not held, but was postponed until Thursday, February 16, 1905, 10 a. m., at the Osburn house, Auburn. (Case No. 3257.)

#### **ALBANY, JANUARY 30, 1905.**

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 8, 1904, as to the closing and discontinuance of the Van Anden street grade crossing of the New York Central and Hudson River Railroad Company's railroad and the construction of two new pieces of street, letters from the city attorney dated January 17 and January 28, 1905, were laid before the Board, together with a certified copy of preambles and resolutions of the common council of Auburn and duplicate original agreement between the city of Auburn and the New York Central and Hudson River Railroad Company as to the acquirement of land necessary. The superintendent of the grade crossing bureau has made a report in this matter dated January 31, 1905. Ordered letter written city attorney that the prices named in said letters and said preambles and resolutions seem to be proper and will be approved by this Board when submitted here in the accounting and settlement. The Board was not in Albany on this date, but the Chairman of the Board, over the telephone, authorized such approval. (Grade Crossing Case No. 407.)

BROOKLYN, NEW YORK CITY, JANUARY 31, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

*Hearings.*

West End Board of Trade, Frederick C. Buys, Mrs. Ryerson, Rev. James Biram, William Walton, G. William Palmer, H. D. Dumont, B. E. Martin and others and Manufacturers' Association of New York (Brooklyn) against The Brooklyn Heights Railroad Company as to service rendered the public. (Cases Nos. 3244, 3248, 3274, 3281, 3286, 3287, 3039 and 3232.) The Board heard the matter of these complaints where the complainant or any one representing him appeared, and in addition heard others who appeared complaining against the service rendered the public by The Brooklyn Heights Railroad Company, the appearances being as follows:

For complainants: George T. Moon, president, and James T. Hoile, secretary, for the Manufacturers' Association of New York; Cornelius M. Sheehan, chairman, committee on transit, Twenty-eighth Ward Board of Trade; Rudolph Horak, editor Borough News and North Beach News; Alex. S. Drescher for the Brownsville Board of Trade; James P. Kohler, president, West Side Taxpayers' Association; Patrick F. McBreen, J. B. Allee for William Walton; I. S. Remsen, E. P. McDowell, Fenwick W. Bergen for the Thirty-second Ward Citizens' Association; Francis W. Glenn, E. H. Kissam, A. A. Harkins for the First Assembly District; Hon. Walter C. Burton, B. E. Martin, Dr. H. Plympton, William Marshall, Charles Landau, Rev. Charles R. East for the Church of the Good Tidings; Franklin B. Patterson, Augustus Wilkin, Martin B. Littleton, president of Brooklyn borough, John C. Breckenridge, commissioner of public works, for Brooklyn borough; Mr. Bronson.

For The Brooklyn Heights Railroad Company: Sheehan & Collin (Mr. Sheehan, Mr. Collin and Mr. Wells appearing) and E. W. Winter, president of the company.

After hearing arguments a recess was taken until 2 p. m.

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Baker and Dickey.

*Hearings.*

The hearing of complaint against The Brooklyn Heights Railroad Company was resumed. Appearances as in the morning. After hearing evidence and arguments (the sworn evidence being alone that of E. W. Winter, president of the company, who was called as a witness), the hearing was adjourned until 10:30 a. m., Wednesday, February 1, 1905.

The Board adjourned.

BROOKLYN, NEW YORK CITY, FEBRUARY 1, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

*Hearings.*

Adjourned hearing in the matter of the complaint of the Allied Civic Associations of the Fourth Ward, Borough of Queens, New York city (complaint joined in by the West End Citizens' League), against The Brooklyn Heights Railroad Company as to service rendered the public on Jamaica avenue. H. B. Engelhardt, president of the Allied Civic Associations; W. P. Beach, secretary of the Allied Civic Associations, also representing the West End Citizens' League; Frank Bennett of the West End League; Michael Carter of the Jamaica Citizens' Association; and Messrs. Baker, Griffiths and W. R. Pierce appeared for the complainants. E. W. Winter appeared for the company. After discussion the hearing was closed. (Case No. 3271.)

The hearing of complaints against The Brooklyn Heights Railroad Company, which were partially heard on the 31st ultimo, was resumed, the appearances being as follows:

For complainants: Jerry J. Chambers for the Twenty eighth Ward Taxpayers' Association; T. DeQuincy Tully for the Voters' Improvement League of Parkville, Kensington and vicinity, and the Law Enforcement Society; John B. Creighton, secretary, Brooklyn League; Cornelius M. Sheehan, chairman, committee on transit, Twenty-eighth Ward Board of Trade; Othniel F. Nichols, chief engineer, department of bridges; N. Poulson; David Porter; Ira McCormack.

For The Brooklyn Heights Railroad Company: Sheehan & Collin (Mr. Wells appearing) and E. W. Winter, president of the company. After hearing arguments the hearing was adjourned until 7:30 p. m., Thursday, February 2, 1905.

The Board adjourned.

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BROOKLYN, NEW YORK CITY, FEBRUARY 2, 1905—7:30 P. M.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

*Hearings.*

The hearing on complaints against The Brooklyn Heights Railroad Company, which were partially heard on the 31st ultimo and the 1st instant, was resumed, the appearances being as follows:

For complainants: Cornelius M. Sheehan, chairman, committee on transit, Twenty-eighth Ward Board of Trade; James P. Kohler, president West Side Taxpayers' Association; Charles M. Higgins; H. D. Dumont for The Merchants' Association of New York; F. K. Winslow for the Sixth Ward Board of Trade; John J. Hastings (6th ward); John Wolf (12th ward); Frederick W. H. Nelson (12th ward); J. E. Segrell; P. J. DeCantillon; Mrs. Hart; W. F. Cornell; Alexander T. Lumley; Michael Schultz; Samuel E. Duckworth; Willis Walker; James S. Lush; E. E. Rees; W. A. Patterson; H. Wayland.

For The Brooklyn Heights Railroad Company: Sheehan & Collin (Mr. Clark appearing), E. W. Winter, president of the company, and Henry W. Hodge, C. E.

After hearing arguments the hearing in all the cases mentioned on the minutes of January 31, 1905, and as to complaints not received until these hearings and which have been made Case No. 3296, was closed. The papers which were with these cases and which were not laid before the Board heretofore were laid before the Board at these hearings. The complaints of William Walton (Case No. 3286) and G. William Palmer (Case No. 3287) were laid before the Board for the first time at these hearings. A report of the electrical expert, dated December 15, 1904, in the complaint of Frederick C. Buys (Case No. 3248), was laid before the Board for the first time at this hearing. Ordered filed. Where reports in the cases heard at these hearings are to be made by the electrical expert or Commissioner Baker, if not differently stated on the minutes of the Board hereafter, these reports will all be included in the report which the Board will make in this matter.

The Board adjourned.

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NEW YORK, FEBRUARY 3, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

*Complaints.*

John W. Gould against the Interborough Rapid Transit Company (Manhattan Railway division) as to the non-heating of Ninth avenue southbound express trains between 8 and 9 a. m. Report of the electrical expert, dated January 31, 1905, received. Ordered copy of the report sent company with a letter making the recommendations in the report the recommendations of this Board. (Case No. 3280.)

The Board adjourned.

ALBANY, FEBRUARY 8, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

#### *Hearings.*

Adjourned hearing in the matter of the application of the Syracuse and South Bay Railway Company (street surface) for a certificate under section 59 of the Railroad Law, this application being on an amended petition, dated January 11, 1905, as to an amended route. R. E. Drake for the applicant; Louis L. Waters for the town board of the town of Clay, for stockholders of the Syracuse and Oneida Lake Electric Railway Company, and others, in favor of the application; Smith Soule for the commissioners of highways of the town of Cicero and for residents of said town, in favor of the application; Willis Gleason for the town board of the town of Salina, in favor of the application; Ray B. Smith also appeared for the highway commissioner of the town of Cicero; Frederick T. Pierson for the highway commissioners of the towns of Clay and Salina, in favor of the application; William L. Barnum for himself and residents of Cicero, in opposition. After hearing evidence and arguments the hearing was adjourned until Friday, February 17, 1905, 10 a. m., at the Yates House, Syracuse. The Board in executive session heard evidence as to the *bona fides* of the applicant company. (Case No. 2262.)

#### *Complaints.*

John G. Clark of Stapleton, S. I., against the Staten Island Rapid Transit Railway Company in relation to change in location of the station of said company known as Clifton. Report dated January 18, 1905, received from electrical expert. Ordered letter written Mr. Clark that in the opinion of the Board the change in location of this station does not come within the provisions of section 34 of the Railroad Law requiring the consent of this Board to the discontinuance of a station. Closed. (Case No. 3276.)

Thomas A. Newell against the City Island Railroad Company and the Pelham Park Railroad Company as to passenger fare charged. Closed. (Case No. 3198.)

A. V. Peterson and James H. Norris against the City Island Railroad Company and the Pelham Park Railroad Company as to passenger fare charged. Closed. (Case No. 3150.)

James J. Lawless against the Buffalo Southern Railroad Company as to non-operation of its railroad between Buffalo and Hamburg and Orchard Park. Copy sent company. Answer of company received stating that snow and accident to boiler had interfered with operation, but that operation had been resumed. Copy sent complainant. Letter dated January 21, 1905, received from complainant stating that operations had been resumed on this line. Closed. (Case No. 3285.)

W. C. Coleman Company of Setauket, L. I., against the Long Island Railroad Company as to receipting for freight before delivery. Answer of company received. Copy sent complainants. Closed. (Case No. 3272.)

In the matter of the complaint of D. M. Warner against the Rochester and Eastern Rapid Railway Company as to a highway grade crossing of said railway near Hopewell Centre, Ontario county, a report dated January 31, 1905, was received from the electrical expert stating that the crossing has been improved. Ordered filed. This case was closed November 30, 1904, although the minutes do not so state, and is not reopened. (Case No. 3220.)

#### *Applications.*

Application of The New York, Auburn and Lansing Railroad Company (steam) for consent to the issue of a first mortgage for \$1,000,000. Ordered hearing set for Thursday, February 16, 1905, 12 m., at the Osburn House, Auburn. (Case No. 3291.)

Application of The New York, Auburn and Lansing Railroad Company (steam-electric), under section 68 of the Railroad Law, as to crossing the

Lehigh Valley Railroad Company's railroad (steam) in Auburn, it being proposed that the crossing be an overhead crossing. Ordered hearing set for Thursday, February 16, 12 m., at the Osburn House, Auburn. This hearing was subsequently postponed. (Case No. 3292.)

Application of the Ellenville and Kingston Railroad Company for consent to the issue of a first mortgage for \$650,000. Ordered hearing set for Wednesday, February 15, 1905, 11:30 a. m., at the office of the Board in Albany. (Case No. 3298.)

Application of the Port Jervis, Monticello and Summitville Railroad Company for consent to the issue of a mortgage for \$450,000. Ordered hearing set for Wednesday, February 15, 1905, 11:30 a. m., at the office of the Board in Albany. (Case No. 3299.)

In the matter of the application of the Elmira and Corning Short Line for a certificate, under section 59 of the Railroad Law, a letter dated February 6, 1905, was received from John B. Stanchfield, attorney, Delaware, Lackawanna and Western Railroad Company, withdrawing the answer interposed by said company. Ordered filed. (Case No. 3142.)

Application of the Ithaca-Cortland Traction Company for approval of an increase of its capital stock from \$200,000 to \$1,000,000. Ordered hearing set for Wednesday, February 15, 1905, 12 m., at the office of the Board in Albany. (Case No. 3297.)

#### *Reports.*

In the matter of the recommendations of this Board to the Erie Railroad Company, growing out of a report of the inspector and the superintendent of the grade crossing bureau, dated December 9, 1904, of their examination of that company's bridge spanning the Chenango river and the island at Binghanton, a letter dated January 13, 1905, was sent to the company and letters dated January 14 and 16, 1905, were received from the company. Ordered filed. Closed. (Case No. 3264.)

Report of the electrical expert, dated January 31, 1905, as to supplemental inspection of the Rochester and Eastern Rapid Railway. Ordered filed. (Case No. 3207.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated July 19, 1904, as to the Chautauqua Traction Company's railroad (street surface-electric) crossing at grade temporarily the steam railroad operated by the Pennsylvania Railroad Company in the Chautauqua road in the village of Mayville, a letter dated January 20, 1905, was received from the company stating that the metal trough on its trolley wire would be extended as recommended by the Board. Ordered filed. (Case No. 3195.)

Report of the inspector, dated January 13, 1905, as to a rear collision between a pusher engine and a freight train on the New York Central and Hudson River Railroad east of Auburn, December 29, 1904. Ordered copy sent company. (Steam Case No. 67—1904.)

Report of the electrical expert, dated January 31, 1905, as to a collision between a Second avenue car and a Fifty-ninth street car on the New York City Railway, December 19, 1904. Ordered copy sent company. (Street Case No. 51—1904.)

Report of the inspector, dated February 1, 1905, as to the bursting of a flue on locomotive engine No. 279 on the Buffalo, Rochester and Pittsburg Railway near Glenwood, December 21, 1904. Ordered copy sent company. (Steam Case No. 68—1904.)

Report of the inspector, dated January 27, 1905, as to the partial dropping of the crown sheet of locomotive engine No. 2369 on the New York Central and Hudson River Railroad near Little Falls, December 29, 1904. Ordered copy sent company. (Steam Case No. 66—1904.)

Report of the inspector, dated January 13, 1905, as to the parting of a freight train and derailment of cars on the Delaware, Lackawanna and Western Railroad near Lowman, December 27, 1904, and extra westbound work train running into the wreck. Ordered copy sent company. (Steam Case No. 65—1904.)

Report of the inspector, dated January 9, 1905, as to a head-on collision between freight trains on the Rome, Watertown and Ogdensburg division of

the New York Central and Hudson River Railroad at Red Creek, December 18, 1904. Ordered copy sent company. (Steam Case No. 62—1904.)

Report of the electrical expert, dated January 18, 1905, as to a collision between trains on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company), October 17, 1904, about 9 p. m., Third avenue line. Ordered copy sent company. (Street Case No. 43—1904.)

Report of the inspector, dated January 27, 1905, as to a rear collision between freight trains on the Lehigh Valley Railroad near Stafford, January 3, 1905. Ordered copy sent company. (Steam Case No. 2—1905.)

Report of the electrical expert, dated January 31, 1905, as to an accident on the Long Island Railroad, January 6, 1905, where several laborers were struck by train No. 63 at the Jamaica cross switches. Ordered copy sent company. (Steam Case No. 5—1905.)

Report of the superintendent of the grade crossing bureau as to an explosion of the boiler of locomotive engine No. 1582 on the Erie Railroad between Smithboro and Tioga Center, January 3, 1905. Ordered copy sent company. (Steam Case No. 3—1905.)

Report of the inspector, dated January 27, 1905, as to a rear collision between passenger trains on the Lake Shore and Michigan Southern Railway at Wanakah, January 4, 1905. Ordered copy sent company. (Steam Case No. 4—1905.)

Report of the inspector, dated January 13, 1905, as to a collision between a dummy car carrying passengers and a switch engine on the International bridge near Black Rock, January 2, 1905. Ordered copy sent company. (Steam Case No. 9—1905.)

Report of the electrical expert, dated January 18, 1905, as to a rear collision between southbound Ninth avenue passenger trains on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company) between Fourteenth street and Christopher street stations, January 6, 1905. Ordered copy sent company. (Street Case No. 2—1905.)

In the matter of the recommendation of this Board, growing out of a report of the inspector, dated January 7, 1905, as to an accident on the New York Central and Hudson River Railroad at Syracuse, December 21, 1904, where the Empire State Express struck a switching engine, letter dated January 30, 1905, was received from the company as to compliance with the recommendation, which was as to the providing of interlocking at the point where the accident occurred. Ordered filed. (Steam Case No. 64—1904.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street grade crossing of the New York Central and Hudson River Railroad in the city of Rochester to an undercrossing of the railroad and the closing of the east end of Davis street where it now joins North Union street, detailed plans for the substructure and superstructure were submitted to the Board by the company, together with a report thereon, dated February 1, 1905, from the superintendent of the grade crossing bureau. Ordered said detailed plans for the substructure and superstructure approved. There was also submitted to the Board by the company in this case a blue print plan showing change in grade of the 24-inch sewer, together with a report thereon, dated February 1, 1905, from the superintendent of the grade crossing bureau. Ordered said change in grade of sewer approved. (Grade crossing Case No. 416.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings of said railroad, a detailed plan for the bridge to carry the railroad over the American Locomotive Company's track was submitted to the Board by the company, together with a report thereon, dated January 14, 1905, from the superintendent of the grade crossing bureau. Ordered said plan approved. In this case there was also submitted to the Board by the company a lay-out plan for

the masonry and bridge to carry the railroad over Romeyn street, together with a report thereon, dated January 13, 1905, from the superintendent of the grade crossing bureau. Ordered said plan approved. (Grade Crossing Case No. 390.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a changed plan for the bridge carrying the railroad at Center street and showing a retaining wall along the property of Scott and Naylor was submitted to the Board by the company. Ordered said plan approved. A report in this matter, dated February 14, 1905, was made by the superintendent of the grade crossing bureau. Ordered filed. In this matter there was also submitted a plan showing land to be acquired for the construction of a retaining wall beginning at a point about 150 feet east of State street and running about 350 feet further east from said point, the retaining wall to take the place of slopes as originally planned. Ordered said plan approved. (Grade Crossing Case No. 389.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the grade crossing of the New York and Putnam division of the New York Central and Hudson River Railroad by a highway known as the Croton and Drewsville road at a point known as Light's (Laights) crossing in the town of Carmel, Putnam county, and the construction of new pieces of highway and an overcrossing of said railroad at another point, plans, specifications and estimate of expense for this work were submitted to the Board by the company together with a report thereon, dated February 6, 1905, from the superintendent of the grade crossing bureau. Ordered said plans, specifications and estimate of expense approved. (Grade Crossing Case No. 398.)

In the matter of the determination of this Board, under section 61 of the Railroad Law, dated October 24, 1902, as to Center avenue, New Rochelle, crossing the main line of the New York, New Haven and Hartford Railroad Company, and as to Webster avenue, New Rochelle, crossing the Harlem River and Port Chester branch and the main line of said company, and modified determination dated October 8, 1903; and further modified determination dated November 30, 1904, as to retaining wall along the frontage of the property of The Knickerbocker Press and the J. A. Mahlstet Lumber & Coal Company, the proposal of John W. Daly & Company for the building of said retaining wall and steps was submitted to the Board by the company together with a report thereon, dated February 6, 1905, from the superintendent of the grade crossing bureau. Ordered said proposal as follows approved:

Rock excavation .....	\$1 50 per cu. yd.
Earth excavation .....	0 35 " " "
Third class masonry .....	3 50 " " "
Coping, 1' x 2 1/2' .....	2 75 " lin. ft.
Steps for stairway 16 1/2" x 15" .....	2 00 " " "

(Grade Crossing Case No. 332.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 9, 1904, that the Newburgh and Campbell Hall road highway grade crossing of the New York, Ontario and Western Railway near its Rock Tavern station shall be closed and discontinued, the travel to be diverted by the construction of a new piece of highway to an overhead bridge crossing of said railway to be situated at another point, a letter, dated February 7, 1905, from the company was submitted to the Board as to the filling and as to contractors' price for concrete for the abutments of the bridge, viz., \$7 a yard. A report in this matter, dated February 17, 1905, was made by the superintendent of the grade crossing bureau. Ordered approved the proposal of the company that the embankment be rock to be paid for at thirty cents a yard for embankment placed; and ordered approved the price of \$7 a yard for concrete for bridge abutments. This work is to be done by contractors who are now building a second track of the railroad at this point. (Grade Crossing Case No. 483.)

In the matter of the determination of this Board dated January 12, 1905, as to the apportionment of expense between the New York Central and Hudson River Railroad Company and the Delaware, Lackawanna and Western Railroad Company of the fifty per centum of the expense to be borne by said companies of changes of highways and crossings (an overcrossing has been constructed) of railroads operated by said companies in the town of Geddes, Onondaga county, in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated April 15, 1902, Willis Gleason appeared before the Board for the Delaware, Lackawanna and Western Railroad Company and asked that that company be given a hearing as to the division of expense, it not being satisfied with said determination as to such division, although its chief engineer had agreed by letter to the Board to such division. Ordered hearing set for Syracuse, Friday, February 17, 1905, Yates House, 2:30 p. m. (Grade Crossing Case No. 174.)

Report of the electrical expert dated January 31, 1905, as to the recommendation of this Board to the Union Railway Company that it maintain a crossing watchman to protect its passengers crossing the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at the Mount Vernon avenue, Mount Vernon, grade crossing of said railroad. On this report, ordered that the company be notified that the Board withdraws its said recommendation. (Grade Crossing Case No. 282.)

In the matter of the accounting and settlement of the cost of the Case's undercrossing of The Pittsburg, Shawmut and Northern Railroad, in the town of Genesee, Allegany county, constructed in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated August 7, 1902, a report dated February 6, 1905, was received from the superintendent of the grade crossing bureau as to inaccuracies in the accounting and settlement. Ordered filed. (Grade Crossing Case No. 355.)

In the matter of the petition of the town board of the town of Reading, Schuyler county, under section 62 of the Railroad Law, as to changing a grade crossing of the Syracuse, Geneva and Corning Railway (leased to and operated by the New York Central and Hudson River Railroad Company) by a highway leading from Reading Centre to the village of Watkins at a point in said town known as Big Hollow, Big Gully or Irelandville Gully, from grade to an undercrossing, a letter dated February 6, 1905, was received from the attorney for the town. Ordered filed. (Grade Crossing Case No. 515).

#### *Orders.*

The Board ordered that a lease of rooms Nos. 404, 405 and 406, in the Whitehall Building, 17 Battery Place, New York city, for one year from May 1, 1905, be signed, the rooms to be used as the New York office of the Board.

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

J. D. Shultz (expenses).....	\$97 50
Karl F. Colson (expenses).....	19 75
W. M. Davis (expenses).....	65 00
F. H. Coggeshall (expenses).....	6 00
Hattie M. Veltman.....	\$121 05
	7 35
	5 40
	<hr/>
	133 80
Charles R. Barnes (expenses).....	116 75
Brandow Printing Co.....	23 23
"Klips," E. C. Cuyler, Secretary-Treasurer.....	25 00
American Express Co., December.....	\$12 06
American Express Co., January.....	10 29
	<hr/>
	22 35



National Express Co., December.....	\$9 59	
National Express Co., January.....	18 99	
		\$28 58
Great Bear Spring Co., December.....	\$2 70	
Great Bear Spring Co., January.....	2 40	
		5 10
Thomas J. Cowell, December.....	\$14 35	
Thomas J. Cowell, January.....	17 90	
		32 25
Smith-Premier Typewriter Co., December.	\$6 25	
Smith-Premier Typewriter Co., January..	22 37	
		28 62
Hudson Valley Paper Co.....		4 50
Albany Law Journal Co.....		3 00
Railroad Gazette .....		4 20
Philip J. Henzel.....		24 96
Postal Telegraph-Cable Co., December....	\$4 80	
Postal Telegraph-Cable Co., January.....	12 38	
		17 18
Western Union Telegraph Co., October...	\$6 01	
Western Union Telegraph Co., December..	9 01	
		15 02
F. M. Baker (expenses).....		170 00
New York office:		
Battery Place Realty Co., February rent.....		150 00
American Ice Co.....		7 90
New York Telephone Co.....		13 55
Western Union Telegraph Co., November.	\$0 78	
Western Union Telegraph Co., January..	4 23	
		5 01
American Distilled Water Co., Agt., 1904, to Janu- ary, 1905, inclusive.....		3 20
		<u>\$1,022 45</u>
<i>Grade Crossing Expenses.</i>		
A. H. Sutermeister (expenses).....	\$59 50	
James E. Brazee (expenses).....	71 60	
G. C. Van Buren.....	10 00	
		<u>\$141 10</u>

The Board adjourned.

NEW YORK, FEBRUARY 9, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

*Hearings.*

In the matter of the complaints against the Brooklyn Heights Railroad Company as to service rendered the public (Cases Nos. 3244, 3248, 3274, 3281, 3286, 3287, 3039, 3232 and 3296) the Board gave a hearing on what is called the Poulson plan for improvements at the Manhattan terminus of the New York and Brooklyn bridge. Charles L. Rowland appeared for Neils Poulson the author of the plan. W. J. Wilgus, fifth vice-president, New York Central and Hudson River Railroad Company; J. C. Stuart, general manager, Erie Railroad Company; C. L. Addison, general superintendent Long Island Railroad Company, Chief Engineer Nichols of the New York City Bridge Department; John Cade; E. W. Curtis (who also submitted a plan); John D. Hall and E. C. Reese also appeared in relation to this

plan; Mr. Wilgus, Mr. Stuart, Mr. Addison, Mr. Cade and Mr. Nichols appearing at the request of this Board. J. P. Hanson also submitted a plan to the Board for improvements at the terminus of the New York and Brooklyn bridge. After hearing arguments the hearing was closed.

#### *Orders.*

The Board adopted and ordered issued its report and recommendations in the matter of complaints against the Brooklyn Heights Railroad Company as to service rendered the public by that company on the street surface and elevated railroad lines operated by it. (Cases Nos. 3244, 3248, 3274, 3281, 3286, 3287, 3039, 3232 and 3296.)

The Board adjourned.

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ALBANY, FEBRUARY 15, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

#### *Hearings.*

Application of the Ithaca-Cortland Traction Company (single track street surface electric), under section 68 of the Railroad Law, as to crossing the railroads operated by the Lehigh Valley Railroad Company (steam), namely, the Lehigh and New York Railroad and the Elmira, Cortland and Northern Railroad in the village of Freeville, the Lehigh and New York Railroad near Willow Glen, and the Elmira, Cortland and Northern Railroad near McLean. George E. Monroe and E. H. Chandler for the applicant; A. S. Diven for the Lehigh Valley Railroad Company, the Lehigh and New York Railroad Company and the Elmira, Cortland and Northern Railroad Company. After hearing evidence and arguments it was determined that the applicant should file with the Board plans in detail showing the structures as proposed (the crossings to be all overhead), the applicant to also furnish Mr. Diven copies of these plans. There may be another hearing in this matter as to the plans. (Case No. 3294.)

In the matter of the application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface electric) shall cross the Auburn branch of the Lehigh Valley Railroad (steam) at or near the intersection of West Main street and Rochester street in the village of Dryden, above, below or at the grade of said steam railroad (which hearing was closed on January 12, 1905), H. D. Titus, superintendent of the division of the steam railroad in question made statements as to protection by signals and derails if the crossing is allowed to be at grade, and W. H. Lane, engineer for the Hall Signal Company, made statements for the electric railroad as to derails and signals if the crossing is to be at grade. (Case No. 3127.)

Application of the Ellenville and Kingston Railroad Company for consent to the issue of a first mortgage for \$650,000. John B. Kerr for the applicant. After hearing arguments the hearing was closed. (Case No. 3298.)

Application of the Port Jervis, Monticello and Summitville Railroad Company for consent to the issue of a mortgage for \$450,000. John B. Kerr for the applicant. After hearing arguments the hearing was closed. (Case No. 3299.)

Application of the Ithaca-Cortland Traction Company for approval of an increase of its capital stock from \$200,000 to \$1,000,000. E. H. Chandler and George E. Monroe for the applicant. After hearing arguments the hearing was closed. (Case No. 3297.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the crossing of the New York and Putnam division of the New York Central and Hudson River Railroad by a highway known as the Croton and

Drewsville road at a point known as Light's (Laights) crossing in the town of Carmel, Putnam county, and the construction of new pieces of highway and an overcrossing of said railroad, plans, specifications and estimate of expense for which have been approved by this Board (see minutes of February 8, 1905), a letter, dated February 11, 1905, was submitted to the Board by the company, together with a blue print showing the fences on the approaches set twenty feet apart instead of eighteen and showing an easement provided on the northeast corner of the road at the point where the new highway joins the Carmel and Brewster road. Ordered said changes approved. (Grade Crossing Case 398.)

#### Orders.

Application of the Ellenville and Kingston Railroad Company for consent to the issue of a first mortgage for \$650,000. Granted. (Case No. 3298.)

Application of the Port Jervis, Monticello and Summitville Railroad Company for consent to the issue of a mortgage for \$450,000. Granted. (Case No. 3299.)

The Board adjourned.

#### AUBURN, FEBRUARY 16, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

#### Hearings.

Application of the Auburn and Northern Electric Railroad Company for a certificate under section 59 of the Railroad Law. Teller & Hunt (Thomas M. Hunt appearing) and James W. Hart for the applicant; L. G. Morphy for the New York Central and Hudson River Railroad Company, as to a proposed crossing of said railroad by the applicant's railroad on State street, Auburn, it being stated that the applicant is to use the existing tracks of the Auburn and Syracuse Electric Railroad Company at this point; T. M. Osborne in person, as to a portion of the route; William Nottingham for the Auburn and Syracuse Electric Railroad Company, in favor of the application. After hearing evidence and arguments the hearing was closed. The Board in executive session heard testimony as to the *bona fides* of the applicant company. (Case No. 3287.)

Application of The New York, Auburn and Lansing Railroad Company for consent to the issue of a first mortgage for \$1,000,000. E. C. Aiken for the applicant. After hearing evidence and arguments the hearing was adjourned until Wednesday, March 1, 1905, 11 a. m., at the New York office of the Board, Room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3291.)

The application of The New York, Auburn and Lansing Railroad Company (steam-electric), under section 68 of the Railroad Law, as to crossing the Cayuga division of the Lehigh Valley Railroad at Auburn, which was to have been held on this date, was postponed to a date to be thereafter fixed. On this date the hearing was set for Wednesday, March 1, 1905, 11 a. m., at the New York office of the Board, Room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3292.)

The Board adjourned.

#### SYRACUSE, FEBRUARY 17, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker and Dickey.

#### Hearings.

Application of the Delaware, Lackawanna and Western Railroad Company for a hearing as to the division of the fifty per centum of the expense of the Geddes, Onondaga county, overcrossing of the New York Central and Hudson

Rvier Railroad, the West Shore Railroad its lessor, and the Oswego and Syracuse Railroad leased to the Delaware, Lackawanna and Western Railroad, this division of expense having been determined by this Board, under date of January 12, 1905. This hearing was set for 2:30 p. m., but on telegraphic notice to the New York Central and Hudson River Railroad Company and the Delaware, Lackawanna and Western Railroad Company it was held at 9 a. m. instead. W. S. Jenney for the Delaware, Lackawanna and Western Railroad Company; L. G. Morphy for the New York Central and Hudson River Railroad Company, in opposition to change of the determination of January 12. After hearing evidence this hearing was adjourned until Thursday, February 23, 1905, at Rochester, and was subsequently adjourned to a date to be thereafter fixed. (Grade Crossing Case No. 174.)

Adjourned hearing in the matter of the application of the Syracuse and South Bay Railway Company (street surface) for a certificate under section 59 of the Railroad Law, this application being on an amended petition, dated January 11, 1905, as to an amended route. R. E. Drake for the applicant; Louis L. Waters for the town board of the town of Clay, for stockholders of the Syracuse and Oneida Lake Electric Railway Company and others, in favor of the application; Smith Soule for the commissioners of highways of the town of Cicero and for residents of said town, in favor of the application; Willia Gleason for the town board of the town of Salina, in favor of the application; M. L. McCarthy for the Louis Point Land and Improvement Company, in favor of the application; J. T. Durham for property owners at the east end of Oneida Lake, in favor of the application; W. G. Tracy for petitioners named in a petition which he filed and for the applicant, in favor of the application; Frederick T. Pierson for the highway commissioners of the towns of Clay and Salina in favor of the application; W. L. Barnum for himself and for residents of Cicero, in opposition. After hearing evidence and arguments the evidence was closed. Briefs are to be exchanged between Mr. Barnum and Mr. Drake and to be filed with this Board within twenty days from this date. Mr. Drake is also to file a record of a case in court in which the Syracuse and Oneida Lake Railway Company was a party. (Case No. 2262.)

The Board adjourned.

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#### ALBANY, FEBRUARY 23, 1905.

The adjourned hearing in the matter of the application of the Albion and Rochester Railway for a certificate under section 59 of the Railroad Law, which was to have been held in Rochester on this date was not held, the hearing having been postponed at the request of attorneys for the applicant. (Case No. 3224.)

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#### NEW YORK, MARCH 1, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Baker.

#### Hearings.

Adjourned hearing in the matter of the application of The New York, Auburn and Lansing Railroad Company for consent to the issue of a first mortgage for \$1,000,000. E. C. Aiken for the applicant. After hearing arguments the hearing was closed. The Board in executive session heard the *bona fides* of the application. (Case No. 3291.)

Application of The New York, Auburn and Lansing Railroad Company (steam-electric), under section 68 of the Railroad Law, as to crossing the Cayuga division of the Lehigh Valley Railroad at Auburn. E. C. Aiken for the applicant; Taber & Brainard for the Lehigh Valley Railroad Company, in relation to proposed structure which is proposed to be an overcrossing. After hearing evidence and arguments the evidence was closed. There is to

be filed with the Board by the applicant a working plan of the structure proposed. Applicant's engineer is to consult with the engineer of the Lehigh Valley Railroad Company in reference to this plan. It is not likely that there will be another hearing in this matter. (Case No. 3292.)

#### *Orders.*

Application of the Auburn and Northern Electric Railroad Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3257.)

Application of The New York, Auburn and Lansing Railroad Company for consent to the issue of a first mortgage for \$1,000,000. Granted on condition that but \$200,000 bonds shall be issued thereunder, under this consent and on condition that said company before issuing the remaining \$800,000 bonds or any part thereof under said first mortgage shall apply for and secure the further consent of this Board to such issuance of said \$800,000 bonds or any part thereof. (Case No. 3291.)

The Board adjourned.

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ALBANY, MARCH 8, 1905.

The adjourned hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law, which was to have taken place in Batavia to-day, was postponed on the 7th inst. and did not take place. (Case No. 3238.)

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ALBANY, MARCH 9, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

The minutes of the meetings of January 12, 25, 26, 27, 30 and 31, February 1, 2, 3, 8, 9, 15, 16, 17 and 23 and March 1, 1905, were read and approved.

#### *Complaints.*

In the matter of the recommendation of this Board in the complaint of Christopher Clarke against the New York and Queens County Railway Company as to service rendered the public between Flushing and Jamaica, the recommendation being as to the substitution of double truck cars for single truck cars on the Flushing-Jamaica line, a letter dated January 11, 1905, was received from the company as to compliance with the recommendation. Ordered filed and letter written company on the subject. (Case No. 3222.)

George C. Coffin (for clients) of New York city against the New York Central and Hudson River Railroad Company, asking that through rates be made between said company's railroad and other railroads to New York city on shipments of hay. Ordered letter written the New York Central and Hudson River Railroad Company on the subject. (Case No. 3293.)

S. W. Turner against the Interborough Rapid Transit Company (Manhattan Railway division) as to the 116th street and Eighth avenue station and as to insufficient train service on the Third avenue line. Report dated January 23, 1905, received from the electrical expert as to that portion of the complaint in relation to the 116th street and Eighth avenue station. Ordered copy sent company, with a letter of recommendation, as shown by office original letter on file. (Case No. 3275.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to freight rate on shipments of live stock from Carmel on the New York and Putnam division of said railroad to New York city. Letters, dated January 19 and February 10, 1905, received from the company. Copies sent complainant (Assemblyman John R. Yale.) Ordered carried on file. (Case No. 3273.)

George W. Jump Company against the New York, New Haven and Hartford Railroad Company (Central New England Railway Company) as to non-delivery of shipments of hay in Brooklyn. Copy sent company. Answers of companies received. Copies sent complainant. Closed. (Case No. 3282.)

P. Condon, Jr., against the Interborough Rapid Transit Company (Manhattan Railway division) as to the operation of a shuttle train service on the Second avenue line from 129th street and Third avenue to 127th street and Second avenue. Copy sent company. Answer of company received. Copy sent complainant. Closed. (Case No. 3295.)

Board of Trade of Avon against the Pennsylvania Railroad Company (Western New York and Pennsylvania Railway, lessor) as to name of station called Avon. Reply of complainant to answer of company received. Closed. (Case No. 3261.)

G. H. Atwell & Son of Cazenovia against the New York Central and Hudson River Railroad Company (West Shore Railroad, lessor) as to freight rates at Cazenovia. Copy sent company. Answer of company received stating that the same rates would be applied to Georgetown as to Cazenovia. Copy sent complainants. Reply of complainants received. Closed. (Case No. 3289.)

Thomas D. Lewis against the Delaware, Lackawanna and Western Railroad Company as to proposed crossing of its railroad by Leitch street in Fulton. Closed. (Case No. 3204.)

Howard Thornton of Newburgh against the Erie Railroad Company as to its passenger train service between Greycourt and Newburgh. Answer of company received. Copy sent complainant. Reply of complainant to answer of company received. Ordered hearing set for Wednesday, March 15, 1905, 11 a. m., at the New York office of the Board, room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3265.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to operation of locomotive engines attached to trains on the Attica branch of said railroad, reversed. Copy sent company. Letter dated March 3, 1905, received from company. Ordered filed. (Case No. 3305.)

Common council of the city of Yonkers against the Yonkers Railroad Company as to service rendered the public by said company; and in relation to removal of ice and snow from the tracks of said company. The complainants were referred to section 98 of the Railroad Law in relation to removal of ice and snow from the tracks. Ordered letter written the company, as shown by copy on file, in relation to the complaint as to service rendered the public being made specific. (Case No. 3301.)

In the matter of the opinion, dated December 31, 1904, from the Attorney-General as to jurisdiction of this Board over the railroad subway in New York city operated by the Interborough Rapid Transit Company, a letter dated January 20, 1905, was received from G. L. Rives, attorney, Board of Rapid Transit Railroad Commissioners of the State of New York, and a letter dated March 7, 1905, was received from the Attorney-General. Ordered filed. Closed. (Case No. 3263.)

Louis C. Lindeman against the Brooklyn Heights Railroad Company as to running of open cars, shelter station at Fifth avenue and 68th street and operation of cars to Fort Hamilton. Letter dated January 14, 1905, received from the company as to compliance with the recommendation of the Board. Copy sent complainant. Letter dated January 18, 1905, received from complainant. Closed. (Case No. 3270.)

In the matter of the recommendations of this Board dated February 9, 1905, to the Brooklyn Heights Railroad Company, in the matter of complaints against said company as to service rendered the public by it on its street surface and elevated railroad lines, a letter dated February 20, 1905, was received from the company as to compliance with the recommendations. Ordered filed. This case is closed on minutes of February 9, 1905, and not reopened. (Case No. 3296.)

John W. Gould against the Interborough Rapid Transit Company (Manhattan Railway division) as to the non-heating of Ninth avenue, south-bound express train between 8 and 9 a. m. Letter dated February 23, 1905, received from the company as to compliance with the recommendations of the Board. Ordered filed. Closed. (Case No. 3280.)

E. L. Woodward against the Buffalo, Rochester and Pittsburgh Railway Company and the New York Central and Hudson River Railroad Company as to the making of flying switches at LeRoy; further complaint dated January 20, 1905, was received from complainant as to the making of flying switches on the New York Central and Hudson River Railroad and the Erie Railroad. Copy of complaint sent said companies. Answers of companies received to the effect that orders had been given that the making of flying switches on said railroads at LeRoy must be stopped. Copies sent complainant. Letters dated February 7 and 21, 1905, received from complainant. Letter dated March 7, 1905, received from complainant complaining as to the making of flying switches on the Buffalo, Rochester and Pittsburgh Railway, March 7. Copy sent Buffalo, Rochester and Pittsburgh Railway Company. This case was closed on the minutes of November 30, 1904, and is now reopened. (Case No. 3225.)

Richard F. Stack against the Interborough Rapid Transit Company (Manhattan Railway division) relative to service rendered the public on the Second avenue line. The Board is now investigating this matter as well as other matters in connection with the operation of the Second and Third avenue elevated lines of the Interborough Rapid Transit Company. This case is closed. (Case No. 3288.)

Allied Civic Associations of the Fourth Ward, Borough of Queens, New York city, against the Brooklyn Heights Railroad Company as to service rendered the public to Jamaica. Report dated March 2, 1905, received from the electrical expert. Ordered filed. (Case No. 3271.)

#### *Applications.*

Application of the Long Island Electric Railway Company (single track street surface electric), under section 68 of the Railroad Law, as to crossing the three tracks of the Long Island Railroad (steam) in the Hempstead and Jamaica Turnpike, east of Queens. It appearing that there is a proceeding in court under section 12 of the Railroad Law as to this crossing, this application was ordered filed until said proceeding is determined. (Case No. 3303.)

Application of the Ithaca and Cayuga Heights Railway Company for consent to the issue of a first mortgage for \$40,000. Granted without a hearing. (Case No. 3304.)

In the matter of the application of the Elmira and Corning Short Line for a certificate under section 59 of the Railroad Law, a communication dated March 3, 1905, was received from the company withdrawing said application. Ordered leave granted to withdraw said application, and case closed. (Case No. 3142.)

#### *Reports.*

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated July 19, 1904, as to the Chautauqua Traction Company's railway (street surface electric) crossing at grade temporarily the steam railroad operated by the Pennsylvania Railroad Company in the Chautauqua road in the village of Mayville, in which a report dated December 17, 1904, was made by the inspector and in which the Board recommended to the company that the trolley on its trolley wire should be extended, letters dated January 20 and February 5, 1905, were received from the company stating that said trolley would be extended for a further distance on each side of the steam railroad. Ordered filed. (Case No. 3195.)

#### *Crossings.*

Application of the highway commissioner of the town of Horseheads, Chemung county, under section 61 of the Railroad Law, for a determination of the manner in which Fourteenth street in said town shall cross the Lehigh Valley Railroad (a new highway crossing said railroad at Eleventh street having been discontinued). Ordered carried on file. (Grade Crossing Case No. 526.)

Application of the city of New York, under section 61 of the Railroad Law, for a determination of the manner in which East 167th street in said

city shall cross the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company). Ordered filed. (Grade Crossing Case No. 529.)

Petition of the town board of the town of Southampton, Suffolk county, under section 62 of the Railroad Law, as to changing the River road highway grade crossing of the Long Island Railroad at Eastport to an overcrossing of said railroad within the lines of the present highway. Ordered filed. (Grade Crossing Case No. 528.)

In the matter of the determination of this Board under section 62 of the Railroad Law, dated August 25, 1904, as to changing the Chautauqua road or Valley street (or Lake road) grade crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) in Mayville to an overcrossing, plans and specifications for this work were submitted to the Board, together with a report thereon dated March 1, 1905, from the superintendent of the grade crossing bureau. An estimate is to be submitted in the future. (See minutes of November 30 and December 14, 1904.) Ordered that the plan for the superstructure alone be approved, and that the company be written in relation to plans for the approaches and the specifications for the abutments as shown by copy of letter on file. (Grade Crossing Case No. 491.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, plans (the State or city to bear no portion of the expense) as to changes in structures, so that the Schenectady Railway tracks should run beneath the steam railroads from State street to Union street, were submitted to the Board, together with a report thereon dated March 9, 1905, from the superintendent of the grade crossing bureau; these plans being submitted in letters from the New York Central and Hudson River Railroad Company, dated March 6, 1905, and from The Delaware and Hudson Company, dated March 7, 1905. The changes proposed are at this time only tentative, as the Schenectady Railway has not a franchise from the city to construct its railroad at the points in question. Ordered said plans returned to the companies with a statement that the Board will not consider them until it appears that the Schenectady Railway has a franchise to construct at the points in question, and until said plans bear the approval of the city, and after a hearing at which an attorney or attorneys for the companies shall be heard before the Board on the subject. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 7, 1902, as to changing the Case's crossing of The Pittsburg, Shawmut and Northern Railroad in the town of Genesee, Allegany county, from grade to an undercrossing, a further report dated February 15, 1905, was received from the superintendent of the grade crossing bureau as to the accounting and settlement. Ordered that the State's proportion of the cost, viz., \$3,054.93, be paid The Pittsburg, Shawmut and Northern Railroad Company. (Grade Crossing Case No. 355.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 10, 1902, in the matter of the closing and discontinuance of the South Country road grade crossing of the Long Island Railroad in the town of Southampton, Suffolk county, and the construction of a new piece of highway, an accounting and settlement of the cost between the company and the town was submitted to the Board, together with a report thereon dated March 1, 1905. Ordered that the State's proportion of the cost, viz., \$100.06, be paid, \$25.12 to the Long Island Railroad Company, and \$74.94 to the town of Southampton. (Grade Crossing Case No. 201.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, proposals of contractors



for the steel superstructures for the bridges (except lift bridge over the Erie canal at Union street), and for viaduct between State and Liberty streets, were submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon dated February 28, 1905, by the superintendent of the grade crossing bureau. Ordered approved the proposal of the American Bridge Company for said bridges and viaduct, unit prices, viz:

Bridge at	Piece per lb. (cents)
Edison avenue .....	3 1-2
State street .....	4 1-10
Station viaduct .....	3 35-100
Union street .....	4 1-10
Green street .....	4 1-10
Front street .....	4 1-10
Center street .....	3 7-10
Fonda street .....	4 1-10

Estimated weights material, bridges and viaduct erected and in place. (Grade Crossing Case No. 369.)

#### *Orders.*

Application of the Ithaca and Cayuga Heights Railway Company for consent to the issue of a first mortgage for \$40,000. Granted. (Case No. 3304.)

Application of the "Corning and Painted Post Street Railway" for approval of a petition to the Supreme Court for leave to change its name to "Elmira, Corning and Painted Post Railway." Denied. (Case No. 3267.)

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

Brandow Printing Co.....	\$90 00	
Brandow Printing Co.....	73 30	
		<hr/>
		\$163 30
E. C. McEntee (expenses).....		15 00
Battery Place Realty Co. (March rent New York office) .....		150 00
		<hr/>
		\$328 30
		<hr/>

The Board adjourned.

#### ALBANY, MARCH 9, 1905.

The hearing in the matter of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law, which was to have taken place in Batavia to-day, was postponed on the 7th inst. and did not take place. (Case No. 3277.)

#### NEW YORK, MARCH 15, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

#### *Hearings.*

Application of the Delaware and Eastern Railroad Company for a certificate under section 59 of the Railroad Law. Walter E. Cooke for the applicant; H. J. Williams for property owners, in favor of the application; C. E. Hulbert, a property owner, in favor of the application; E. A. Holmes in

favor of the application; J. Turnboldt, in favor of the application; C. A. Sanford, in favor of the application; Monroe Williams, in favor of the application; John B. Kerr, for the New York, Ontario and Western Railway Company. After hearing evidence and arguments the hearing was adjourned until Thursday, March 23, 1905, 2 p. m., at the office of the Board in Albany. Mr. Cooke took the map previously filed with the Board. (Case No. 3302.)

Howard Thornton, of Newburgh, against the Erie Railroad Company as to its passenger train service between Greycourt and Newburgh. The complainant or any one representing him did not appear; D. W. Cooke for the Erie Railroad Company. Closed. (Case No. 3265.)

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

John R. McClellan.....	\$9 00
John R. McClellan.....	6 75
May V. Tanner (stenographer, services).....	13 08
J. D. Schultz (expenses).....	69 00
"Klips," E. C. Cuyler, Secretary-Treasurer.....	25 00
C. R. Barnes (expenses).....	100 00
Karl F. Colson (expenses).....	20 70
Thomas J. Cowell.....	32 15
Postal Telegraph-Cable Company.....	7 92
The Smith-Premier Typewriter Co.....	16 87
Remington Typewriter Co.....	3 00
W. M. Davis (expenses).....	85 00
J. B. Lyon Company.....	5 00
National Express Co.....	10 59
American Express Co.....	7 44
Engineering News Publishing Co.....	5 00
Lang Stamp Works.....	1 20
Great Bear Spring Co.....	2 40
Western Union Telegraph Co. (New York office)...	3 03
E. A. Parker (New York office).....	2 62
Hudson River Telephone Co., November.....	26 61
Hudson River Telephone Co., December.....	16 42
Hudson River Telephone Co., January.....	21 36
New York Telephone Co. (New York office).....	22 15
F. H. Coggeshall (expenses).....	10 00
	<hr/>
	\$522 29
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#### *Grade Crossing Expenses.*

James E. Brazee (expenses).....	\$57 60
C. W. Peck.....	10 00
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	\$67 60
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The Board adjourned.

ALBANY, MARCH 16, 1905.

The hearing in the matter of complaints against the Union Railway and the Interborough Rapid Transit Company (Manhattan Railway division) as to service rendered the public, which was to have taken place in the Borough of the Bronx to-day, was postponed on the 11th inst. and did not take place. (Cases Nos. 3154, 3236 and 3259.)

ALBANY, MARCH 23, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Orders.*

Application of the Ithaca-Cortland Traction Company for approval of an increase of its capital stock from \$200,000 to \$1,000,000. Granted. (Case No. 3297.)

Application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface electric) shall cross the Auburn branch of the Lehigh Valley Railroad (Lehigh and New York Railroad, lessor, steam) at or near the intersection of West Main street and Rochester street in the village of Dryden, above, below or at the grade of said steam railroad. Determination, as shown by office original determination on file, that said crossing shall be at grade. (Case No. 3127.)

Application of The Electric City Railway Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3156.)

The Board took a recess until 2 p. m.

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

Application of the New York City Inter-Borough Railway Company for approval of an increase of its capital stock from \$400,000 to \$5,000,000. Strong & Cadwalader (John F. Charlton appearing) for the applicant. After hearing arguments the hearing was closed. (Case No. 3308.)

Application of the New York City Inter-Borough Railway Company for consent to the issue of a first mortgage for \$5,000,000. Strong & Cadwalader (John F. Charlton appearing) for the applicant. After hearing arguments the hearing was closed. (Case No. 3309.)

Application of the New York City Inter-Borough Railway Company, under section 100 of the Railroad Law, for approval of the operation of its railroad by the overhead electrical trolley system. Strong & Cadwalader (John F. Charlton appearing) for the applicant. After hearing arguments the hearing was closed. (Case No. 3310.)

Adjourned hearing in the matter of the application of the Delaware and Eastern Railroad Company for a certificate under section 59 of the Railroad Law. Walter E. Cooke for the applicant; H. J. Williams for property owners, in favor of the application; John B. Kerr for the New York, Ontario and Western Railway Company, in opposition; Amos Van Etten for the Ulster and Delaware Railroad Company, in opposition. After hearing evidence and arguments the hearing was adjourned until Friday, April 7, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3302.)

*Orders.*

Application of the New York City Inter-Borough Railway Company for approval of an increase of its capital stock from \$400,000 to \$5,000,000. Granted. (Case No. 3308.)

Application of the New York City Inter-Borough Railway Company for consent to the issue of a first mortgage for \$5,000,000. Granted. (Case No. 3309.)

Application of the New York City Inter-Borough Railway Company, under section 100 of the Railroad Law, for approval of the operation of its railroad by the overhead electrical trolley system of motive power. Granted. (Case No. 3310.)

The Board adjourned.

ELMIRA, MARCH, 28, 1905.

*Hearings.*

Hearing before Commissioner Dunn (by delegation of the Board) in the matter of the application of John M. Van Gorden, highway commissioner of the town of Horseheads, Chemung county, under section 61 of the Railroad Law, for a determination as to whether Fourteenth street in said town shall cross the Lehigh Valley Railroad over, under or at the grade of said railroad. William R. Compton for the applicant; Seymour Lowman for the W. R. Compton Realty and Building Company, in favor of the application; George McCann for the village of Elmira Heights, in favor of the application; H. D. Titus for the Lehigh Valley Railroad Company. After hearing evidence and arguments the hearing was closed. (Grade Crossing Case No. 526.)

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NEW YORK, MARCH 24, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

The Board heard E. P. Bryan, vice-president and general manager, and Frank Hedley, general superintendent, of the Interborough Rapid Transit Company, as to the operation of trains on the elevated and subway lines of said company. Statements were made to the Board as to the number of trains being operated, which were followed by a letter from the company, dated March 24, 1905, on this subject.

The Board adjourned.

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ALBANY, MARCH 30, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

The minutes of the meetings of March 8, 9, 15, 16, 23 and 28, 1905, were read and approved.

*Complaints.*

West End Board of Trade of Brooklyn against the Brooklyn Heights Railroad Company as to service rendered the public. A letter dated March 22, 1905, was received from complainants, enclosing a letter dated March 22, 1905, from complainants to the superintendent of the company. Copies of letters sent company. Ordered that the electrical expert make a report in the matter. This case was closed on the minutes of January 3, 1905, and is now re-opened. (Case No. 3253.)

E. L. Woodward against the Buffalo, Rochester and Pittsburgh Railway Company, the New York Central and Hudson River Railroad Company and the Erie Railroad Company as to the making of flying switches at LeRoy. Answer of the Buffalo, Rochester and Pittsburgh Railway Company dated March 24, 1905, received, to the effect that instructions had been given to discontinue the making of flying switches on said railway. Copy sent complainant. Letter dated March 22, 1905, received from complainant. This case was closed on the minutes of November 30, 1904, and re-opened on the minutes of March 9, 1905; it is now again closed. (Case No. 3225.)

Sutherland R. Haxtun against the Brooklyn Heights Railroad Company as to service rendered the public on its railroad from the foot of Montague street, Brooklyn, on Saturday afternoon, and as to its service on the Brooklyn Bridge from Manhattan at night after the rush hours. Copy sent company. Ordered that the electrical expert make a report in this matter. (Case No. 3312.)

William E. Frick and H. S. Metz against the Buffalo and Williamsville Electric Railway Company as to non-operation of the east end of its line between Williamsville and the Transit road. Copy sent company. Answer of company received. Copy sent complainants. Reply of complainants

received, reiterating complaint. Copy sent company. Telegram received from company stating that the portion of the line in question is in operation. Complainants were notified to this effect. Closed. (Case No. 3306.)

T. F. Walsh against the Westchester Traction Company as to lack of conductors on cars. Letter dated March 16, 1905, received from the company as to compliance with the recommendations of the Board in inspection case No. 2227. Ordered filed. Closed. (Case No. 3205.)

In the matter of the recommendations of this Board in the complaint of Christopher Clarke against the New York and Queens County Railway Company as to service rendered the public between Flushing and Jamaica, the recommendation being as to the substitution of double truck cars for single truck cars on the Flushing-Jamaica line, letters dated March 11 and 16, 1905, were received from complainant, and a letter dated March 13, 1905, was received from the company as to compliance with the recommendation. Ordered filed. (Case No. 3222.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to freight rate on shipments of live stock from Carmel on the New York and Putnam division of the New York Central and Hudson River Railroad to New York city. Assemblyman John R. Yale, and Charles E. Nichols, shipper, for whom the complaint was made, appeared before the Board. Ordered hearing set for Friday, April 7, 1905, 9:30 a. m., at the New York office of the Board, room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3273.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to the operation of locomotive engines attached to trains on the Attica branch of said railroad, reversed. Answer of company received. Copy sent to F. C. Stevens, complainant. Reply of complainant received. Ordered recommendation made to the company that this method of operation of engines on this branch be discontinued and that all engines drawing trains be operated head-on. (Case No. 3305.)

F. Friedleben against the New York Central and Hudson River Railroad Company, as lessee of the New York and Harlem Railroad, as to passenger fare from Grand Central Station to Wakefield being twenty-eight cents, the complaint alleging that the fare from Grand Central Station to Tremont is ten cents and from Tremont to Wakefield fifteen cents, a total of twenty-five cents. Copy sent company. (Case No. 3317.)

George C. Coffin (for clients) of New York city against the New York Central and Hudson River Railroad Company asking that through rates be made between said company's railroad and other railroads to New York city on shipments of hay. Answer of company received. Closed. (Case No. 3293.)

C. H. Turner against the New York and Ottawa Railway as to setting of fires from locomotives. Letter dated March 26, 1905, received from the company to the effect that the recommendation of the Board as to clearing up of brush, etc., on its right of way will be complied with in the spring. Ordered filed. (Case No. 3147.)

A letter dated March 17, 1905, was received from Fletcher DuBois of New York city as to fenders on street surface railroad cars in New York city. Ordered filed. (Case No. 2804.)

Twenty-eighth Ward Board of Trade against the Brooklyn Heights Railroad Company as to service rendered the public. A report dated March 2, 1905, was received from the electrical expert as to the lengthening of platforms on the elevated railroad stations. Letter dated March 9, 1905, received from complainants. The electrical expert is to make a further report in this matter. (Case No. 3254.)

#### *Applications.*

Application of the Corning and Painted Post Street Railway, under section 68 of the Railroad Law, as to crossing the Erie Railroad at a point in the town of Corning, Steuben county, near what is known as the Caton road, it being proposed that the crossing be an undercrossing. Ordered carried on file. (Case No. 3316.)

Application of the Long Island Railroad Company, under section 34 of the Railroad Law, for consent to the discontinuance of its Beach Channel station on its Rockaway Beach division. Ordered carried on file. (Case No. 3307.)

Application of the Keeseville, Ausable Chasm and Lake Champlain Railroad Company, under section 68 of the Railroad Law, as to crossing the New York and Canada Railroad (operated by The Delaware and Hudson Company) at Port Kent. Ordered hearing set for Tuesday, April 18, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3315.)

In the matter of the application of the New York and Long Island Traction Company (street surface electric), under section 68 of the Railroad Law, as to its railroad crossing the Long Island Railroad (steam-Rockaway branch) at the intersection of the Rockaway Plank road and Ocean avenue, in the Borough of Queens, New York city; and for a determination, under section 68 of the Railroad Law, as to its railroad crossing the right of way of the Jamaica and South Shore Railway Company (two switch tracks has been constructed at this point since the hearing in this matter was closed) immediately north of the conduit of the Brooklyn City Water Works, about 800 feet west of the present tracks of the Long Island Railroad Company, at Springfield, in the Borough of Queens, New York city,—which matter was determined by this Board on November 30, 1904,—a writ of certiorari on the relation of the Long Island Railroad was served on the Board. Ordered filed. The papers to accompany the return to this writ have been sent to the Attorney-General. There was also filed with the Board in this matter plans for derailing switches and signals and copper troughs on the trolley wires at these crossings, together with copies of and original agreements between the Long Island Railroad Company and the Jamaica and South Shore Railroad Company and the New York and Long Island Traction Company as to these crossings. A report dated March 20, 1905, was made by the superintendent of the grade crossing bureau as to the plans. Ordered said plans approved. (Case No. 3087.)

In the matter of the application of the Long Island Electric Railway (single track street surface electric), under section 68 of the Railroad Law, as to crossing the three tracks of the Long Island Railroad (steam) in the Hempstead and Jamaica Turnpike, east of Queens. Report dated March 20, 1905, received from the superintendent of the grade crossing bureau. Ordered filed. (Case No. 3303.)

Application of The Elmira and Waverly Railway Company for a certificate under section 59 of the Railroad Law. There was received in this case proof of publication of the articles of association of this company, but as the publication was made in 1902 and the certificate must be applied for within six months after the completion of the three weeks' publication, said proof was returned to the attorney for the company. Ordered filed. (Case No. 3311.)

In the matter of the application of the Syracuse and South Bay Railway Company for a certificate under section 59 of the Railroad Law, W. L. Barnum, who has appeared in opposition, appeared before the Board and asked further time in which to file a brief and was granted an extension of time until the 7th inst. in which to file his brief. (Case No. 2262.)

#### *Reports.*

In the matter of the recommendations of this Board growing out of a report of the electrical expert, dated October 26, 1904, contained in a letter dated November 21, 1904, to the Staten Island Midland Railroad Company, as to the physical condition of said company's railroad, a letter dated January 16, 1905, was received from the company as to compliance with the recommendations. Ordered filed. (Case No. 3242.)

Report dated March 27, 1905, as to a bridge on the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over Rondout creek, near Kingston, now in process of renewal. Ordered filed. Closed. (Case No. 3314.)

In the matter of the direction of this Board, under section 36 of the Railroad Law, to the Tarrytown, White Plains and Mamaroneck Railway, contained in a letter dated August 8, 1904, to said company as to derailing switches and signals at a crossing at grade in White Plains of the Tarrytown, White Plains and Mamaroneck Railway and the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), a letter dated January 11, 1905, was

received from the company as to compliance with the direction. Ordered filed. (Case No. 2229.)

In the matter of the recommendations of this Board growing out of a report of the electrical expert dated October 26, 1904, contained in a letter dated November 5, 1904, to the Richmond Light and Railroad Company, as to the physical condition of said company's railroad, a letter dated January 16, 1905, was received from the company as to compliance with the recommendations. Ordered letter written the company as to copper troughs. (Case No. 3241. See Street Case No. 26—1904.)

In the matter of the recommendations of this Board contained in a letter dated August 8, 1904, to the Brooklyn Heights Railroad Company, as to the Parkville crossing of the Prospect Park and Coney Island Railroad (Brooklyn Heights Railroad Company, lessee) and the Bay Ridge branch of the Long Island Railroad at a point known as the Parkville crossing, a letter dated February 20, 1905, was received from the company as to the stationing of a flagman at this crossing at all hours instead of its protection by derails and signals, for reasons stated in the company's letter. Ordered that the company be informed that under the circumstances the stationing of a flagman would take the place of the recommendation of the Board as to derails and signals. (Miscellaneous Brooklyn City and Brooklyn Heights crossing inspections.)

In the matter of the recommendation of this Board to the Port Jervis Electric Light, Power, Gas and Railroad Company that it install derailing switches in its track on Ball street, Port Jervis, on each side of the crossing at grade of its railroad and the Port Jervis, Monticello and Summitville Railroad (steam), which matter was turned over to the Attorney-General, a letter dated February 6, 1905, was received from the Attorney-General, enclosing a copy of a letter dated February 4, 1905, from C. R. Horn, treasurer of the company, that a derailing switch has been placed in the electric railroad on the south side of the crossing. A report in this matter dated March 7, 1905, was received from the superintendent of the grade crossing bureau to this effect and to the effect that the switch is being operated. Ordered letter written Attorney-General that this is a compliance with the recommendation of the Board. (Case No. 2380.)

In the matter of the determination of this Board, under section 68, of the Railroad Law, dated July 19, 1904, as to the Chautauqua Traction Company's railway (street surface electric) crossing at grade temporarily the steam railroad operated by the Pennsylvania Railroad Company in the Chautauqua road in the village of Mayville, a letter dated March 24, 1905, was received from the company stating that the trough on its trolley wire at this crossing had been extended as recommended by the Board. Ordered filed. (Case No. 3195.)

Report of the electrical expert dated March 2, 1905, as to the substitution of a steel guardrail in place of a wooden guardrail on the Niagara Gorge railroad. Ordered letter written company as shown by copy on file. (Case No. 2279.)

Report of the electrical expert dated March 2, 1905, as to double tracking the Syracuse, Lakeside and Baldwinsville Railway. Ordered filed. (Case No. 2226.)

Report of the electrical expert dated February 15, 1905, as to signal with an automatic trip to protect trains, being located at stations of the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company). Ordered filed. (Case No. 2804.)

Letters dated January 13 and 17, 1905, were received from the New York City Federation of Women's Clubs as to employment of motormen on street surface, elevated and underground railroads. Ordered filed. (Case No. 2804.)

Report of the superintendent of the grade crossing bureau dated March 4, 1905, as to a temporary timber bridge of the Hudson Valley Railway Company over The Delaware and Hudson Company's railroad at Broadway, Fort Edward. Ordered copy sent company. (Case No. 3321.)

A letter dated January 27, 1905, was received from the New York Central and Hudson River Railroad Company as to the filling of a trestle on the

Raquette Lake Railway, operated by it, on which the inspector of the Board made a supplemental report dated December 1, 1904. Ordered filed. (No. 21—1904.)

Report of the inspector dated February 23, 1905, as to a consultation of himself and officials of The Delaware and Hudson Company as to inside guardrails on bridges. Ordered filed. (No. 6—1904.)

In the matter of the recommendation of this Board contained in a letter to the Fonda, Johnstown and Gloversville Railroad Company, dated October 27, 1904, as to derailing switches at crossings of the electric and steam railroad branches of said railroad, a letter dated January 21, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (Case No. 3215.)

Report of the electrical expert dated March 2, 1905, as to a head-on collision between cars on the Rochester and Eastern Rapid Railway at the Emerson curve, November 19, 1904. Ordered copy sent company. (Street Case No. 48—1904.)

Report of the superintendent of the grade crossing bureau dated February 21, 1905, as to rear end collision between freight trains at Manchester Bridge on the Highland division of the New York, New Haven and Hartford Railroad Company. Ordered copy sent company. (Steam Case No. 14—1905.)

Report of the superintendent of the grade crossing bureau dated March 1, 1905, as to the dropping of a crown sheet of engine No. 2795 on the New York Central and Hudson River Railroad at Whitesboro, February 4, 1905. Ordered copy sent company. (Steam Case No. 12—1905.)

In the matter of the recommendations of this Board growing out of an accident at the crossing at grade of the Union Railway and the New York, New Haven and Hartford Railroad at 138th street, New York city, a report dated January 18, 1905, was received from the electrical expert as to compliance with the recommendations by the Union Railway Company. Ordered filed. (Street Case No. 18—1903.)

Report of the inspector dated March 27, 1905, as to a rear collision between freight trains on the Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) near Niverville, January 8, 1905. Ordered copy sent company. (Steam Case No. 7—1905.)

Report of the electrical expert dated March 22, 1905, as to a collision between an International Railway Company car and a Rome, Watertown and Ogdensburg Railroad engine at the Second street crossing of the New York Central and Hudson River Railroad in Niagara Falls. Ordered copies sent companies, with letters as shown by copies on file. (Street Case No. 52—1904.)

Report of the electrical expert, dated March 22, 1905, as to a collision between an International Railway Company car and light engine at the Niagara street grade crossing of the Grand Trunk Railroad in Buffalo, December 24, 1904. Ordered copies sent companies, with letters as shown by copies on file. (Street Case No. 54—1904.)

Report of the superintendent of the grade crossing bureau, dated February 15, 1905, as to a grade crossing accident near Hornellsville, where a sleigh was struck by a Pittsburg, Shawmut and Northern Railroad train, February 1, 1905. Ordered copy sent company. (Steam Case No. 11—1905.)

Report of the superintendent of the grade crossing bureau, dated March 23, 1905, as to a collision at a crossing near Paynes avenue, North Tonawanda, February 4, 1905, between a gravel train of the International Railway Company and a New York Central and Hudson River Railroad passenger train. Ordered copies sent companies. (Steam Case No. 15—1905.)

Report of the electrical expert, dated March 22, 1905, as to the derailment of a car on The Brooklyn Heights Railroad at the corner of Buffalo avenue and Douglass street, January 7, 1905. Ordered copy sent company. (Street Case No. 3—1905.)

Report of the electrical expert, dated March 22, 1905, as to a collision between a Fourth avenue electric car and a Spring street horse car on the New York City Railway, February 2, 1905, at the corner of Bowery and Spring street, New York city. Ordered copy sent company. (Street Case No. 5—1905.)



In the matter of the recommendation of this Board to the New York Central and Hudson River Railroad Company, contained in a letter dated January 18, 1905, as to interlocking at the Syracuse station, a letter, dated February 25, 1905, was received from the company. Ordered filed. (Steam Case No. 64—1904.)

Report of the superintendent of the grade crossing bureau, dated February 18, 1905, as to a head-on collision between a freight train and a passenger train on The Delaware and Hudson Company's railroad at Plattsburg, February 4, 1905. Ordered copy sent company. (Steam Case No. 13—1905.)

Report of the electrical expert dated January 18, 1905, as to the widening of White Plains road, New York city, and the construction of a double track on it by the Union Railway. Ordered filed. (Street Case No. 20—1901.)

Report of the inspector dated February 23, 1905, as to a rear collision between freight trains on the Schenectady detour of the New York Central and Hudson River Railroad Co., January 1, 1905, near Hoffmans. Ordered copy sent company, with letter of recommendation as shown by office original copy on file. (Steam Case No. 1—1905.)

In the matter of burning of the crown sheet of a locomotive on the Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at Canaan, January 9, 1905, a letter dated February 7, 1905, from the vice-president of the company to the superintendent of the Grade Crossing Bureau was submitted to the Board. Ordered filed. There will be no report in this matter. (Steam Case No. 8—1905.)

Report of the inspector dated February 23, 1905, as to a head-on collision between freight trains on the Buffalo, Rochester and Pittsburgh Railway, north of West Falls station, December 20, 1904. Ordered copy sent company. (Steam Case No. 63—1904.)

Report of the superintendent of the grade crossing bureau, dated February 16, 1905, as to the dropping of crown sheet of boiler of Lehigh Valley locomotive No. 1107, January 27, 1905, at the International Railway bridge near Gratick station on the New York Central and Hudson River Railroad. Ordered copy sent company. (Steam Case No. 10—1905.)

Report of the electrical expert, dated March 23, 1905, as to a collision between cars of the Coney Island and Brooklyn Railroad and the Brooklyn Heights Railroad at the corner of Myrtle and Franklin avenues, Brooklyn, December 29, 1904. Ordered copies sent companies. (Street Case No. 55—1904.)

Report of the inspector, dated February 23, 1905, as to a rear collision between a passenger train and a freight train on the Buffalo, Rochester and Pittsburgh Railway near Riverside Junction, January 8, 1905. Ordered copy sent company. (Steam Case No. 6—1905.)

Report of the electrical expert, dated January 18, 1905, as to compliance by the New York and Long Island Traction Company with recommendations of this Board contained in a letter to the company, dated August 6, 1904, growing out of a head-on collision on said railroad, July 20, 1904. Ordered filed. (Street Case No. 29—1904.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, plans as follows, and general specifications for these steel bridges, were submitted to the Board by the New York Central and Hudson River Railroad Company for approval, together with a report thereon, dated March 15, 1905, from the superintendent of the grade crossing bureau, the plans being as follows:

Steel plan, Fonda street bridge.

Steel plan, bridge No. 378-A over Edison avenue.

Steel plan, bridge No. 381-B over Front street.

Steel plan, bridge No. 381-A over Green street.

Masonry plan, Fonda street bridge.

Masonry plan, bridge No. 381 over Erie canal.

Steel plan, bridge No. 378 over D. & H. tracks.

Steel plan, bridge over Center street.

Steel plan, bridge No. 380-A over Union street.

Ordered said plans and specifications approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a detailed plan of masonry for bridge No. 381-A at Green street, Schenectady, was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated March 22, 1905, from the superintendent of the grade crossing bureau. Ordered said detailed plan of masonry approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a plan for the retaining wall for the coal track east of State street was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated March 14, 1905, from the superintendent of the grade crossing bureau. Ordered said plan approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a plan showing proposed Delaware and Hudson retaining wall east of State street was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated March 15, 1905, from the superintendent of the grade crossing bureau. Ordered said plan approved. (Grade Crossing Case No. 369.)

Petition of the city of Utica and the New York Central and Hudson River Railroad Company joined, under section 62 of the Railroad Law, as to the North Genesee street and Park avenue grade crossings of said railroad in said city, it being proposed that North Genesee street shall be changed to an overcrossing, the Park avenue crossing discontinued and Mohawk street carried over said railroad above grade. Ordered filed. (Grade Crossing Case No. 530.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street crossing of its railroad in the village of Irvington, the travel to be diverted to an existing overcrossing of said railroad. Ordered filed. (Grade Crossing Case No. 536.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street and Wildey street grade crossings of its railroad in the village of Tarrytown and the construction of an undercrossing of its railroad. Ordered filed. (Grade Crossing Case No. 535.)

Petition of the town board of the town of Eastchester, Westchester county, and the New York Central and Hudson River Railroad Company joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the crossing of the New York and Harlem Railroad (New York Central and Hudson River Railroad Company, lessee) in said town known as the Chambers crossing, and the construction of an overcrossing of the railroad. Ordered filed. (Grade Crossing Case No. 534.)

Petition of the mayor and common council of the city of Yonkers and the New York Central and Hudson River Railroad Company joined, under section 62 of the Railroad Law, as to the Pier street, Fenbrook street, Dock street, Wells avenue, Ashburton avenue, Vark street, Main street and Babcock

Place grade crossings of the New York Central and Hudson River Railroad in Yonkers. Ordered filed. (Grade Crossing Case No. 533.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 2, 1902, as to changing the Prior's road or Manhasset and Old Westbury road grade crossing of the Long Island Railroad in the town of North Hempstead, Nassau county, to an undercrossing, a claim for damages by the Nassau Light and Power Company was filed with the Board. Ordered filed. (Grade Crossing Case No. 312.)

In the matter of the modified determination of this Board, under section 62 of the Railroad Law, dated June 10, 1902, as to the Hawkins road grade crossing of the Long Island Railroad, in the town of Brookhaven, Suffolk county, a petition was received from Mrs. Amanda Vanderveer that this modified order be vacated. Ordered that the attorney for Mrs. Vanderveer be written that the Board will not vacate its determination in this matter. This crossing has been closed and discontinued. (Grade Crossing Case No. 227.)

In the matter of the modified determination of this Board, under section 62 of the Railroad Law, dated June 10, 1902, as to the Mount's road grade crossing of the Long Island Railroad, in the town of Brookhaven, Suffolk county, a petition was received from Mrs. Amanda Vanderveer that this modified order be vacated. Ordered that the attorney for Mrs. Vanderveer be written that the Board will not vacate its determination in this matter. This crossing has been closed and discontinued. (Grade Crossing Case No. 228.)

Petition of the village of LaSalle, Niagara county, under section 61 of the Railroad Law, for a determination as to whether Hamilton street in said village shall cross the New York Central and Hudson River Railroad, the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company over, under or at the grade of said railroads and right of way. Ordered hearing set for Hotel Iroquois, Buffalo, Wednesday, April 12, 1906, at 12 o'clock m. (Grade Crossing Case No. 532.)

Application of the town board of the town of Reading, Schuyler county, to withdraw its petition under section 62 of the Railroad Law as to changing a grade crossing of the Syracuse, Geneva and Corning Railway (leased to and operated by the New York Central and Hudson River Railroad Company) and the highway running from Reading Centre to the village of Watkins, at a point in said town known as Big Hollow or Big Gully or Irelandville Gully, to an undercrossing. Ordered leave to withdraw granted, and case closed. (Grade Crossing Case No. 515.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 24, 1902, and modified determinations dated October 8, 1903, and November 30, 1904, as to Center street in the village of New Rochelle crossing the New York, New Haven and Hartford Railroad, and as to Webster avenue in said village crossing the main line and the Harlem River and Port Chester branch of the New York, New Haven and Hartford Railroad, a report dated March 20, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 332.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, as to changing the Broadway crossing of the New York and Putnam division of the New York Central and Hudson River Railroad Company at Van Cortlandt station to an undercrossing, a report dated March 20, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 503.)

Petition of the mayor and common council of the city of Oswego, under section 62 of the Railroad Law, as to the closing and discontinuance of the East Fourth and Schuyler streets grade crossings of the New York Central and Hudson River Railroad and the New York, Ontario and Western Railway and the construction of a new piece of highway and the construction of an undercrossing of said railroads by the extension of East Seventh street under said railroads. Ordered filed. See other petitions as to these crossings heretofore made to this Board. (Grade Crossing Case No. 527.)

*Orders.*

Application of John M. Van Gordon, highway commissioner of the town of Horseheads, Chemung county, under section 61 of the Railroad Law, for a determination as to whether Fourteenth street in said town shall cross the Lehigh Valley Railroad over, under or at the grade of said railroad. Determination, as shown by office original determination on file, that the crossing shall be at grade. (Grade Crossing Case No. 526.)

*Bills Approved.*

The following bills were approved:

*Grade Crossings—Construction Account.*

The Pittsburg, Shawmut and Northern Railroad Company .....	\$3,054 93
State's proportion of the cost of changing the Case's grade crossing in the town of Genesee, Allegany county, to an undercrossing, in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated August 7, 1902.	
Town of Southampton .....	74 94
Long Island Railroad Company .....	25 12
State's proportion of the cost of the closing and discontinuance of the South Country road grade crossing in the town of Southampton, Suffolk county, situated about 3,920 ft. east of the Quogue station, in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated June 10, 1902.	
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	\$3,154 99

The Board adjourned.

NEW YORK, APRIL 6, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Hearings in complaints of the Van Nest Property Owners' Association (Case No. 3236) against the Union Railway Company; Property Owners' Association of the Twenty-third Ward, Borough of the Bronx, New York city, Woodlawn Taxpayers' Association and McLean Taxpayers' Association (Case No. 3259) in the matter of service rendered the public in the borough of the Bronx by the Union Railway Company and the Interborough Rapid Transit Company (Manhattan Railway Division); investigation by the Board of traffic conditions on the Union Railway of New York city (Case No. 3154). At this hearing were heard those who appeared in relation generally to service rendered the public by the Union and Yonkers Railways and the Interborough Rapid Transit Company. Charles Baxter and A. C. Hottenroth for the Twenty-third Ward Property Owners' Association; Philip McKinley for the Bedford Park Association; James P. Powers for the North Side Board of Trade; J. A. Goulden and L. Fielding Marshall; William A. Cokeley for the Throggs Neck Taxpayers' Association; L. Richardt for the South Bronx Property Owners' Association; B. Nelson for the Edenwald Association; John De Hart for the East Morrisiana Association; Philip Freudenmacher for the Building and Trade Employers' Association; Joann Cobolan for the Unionport Property Owners' Association; Harry Mackay for the Van Nest Property Owners' Association; L. A. Cuvillier; L. W. Howe for the Bronx Park Association; H. McLaughlin; Charles Forbach; C. McRae; Frederick A. Stillwell;

E. A. Maher and H. A. Robinson for the Union Railway Company. No one appeared for the Interborough Rapid Transit Company. After hearing arguments the hearing was adjourned until Thursday, April 27, 1905, 11 a. m., at the Hotel Bronxland, Willis avenue and One Hundred and Thirty-fourth street, New York city.

The Board adjourned.

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NEW YORK, APRIL 7, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

#### *Hearings.*

Verbal complaint against the New York Central and Hudson River Railroad Company by Assemblyman John R. Yale, for Charles E. Nichols, a shipper at Carmel, on the New York and Putnam division of said company's railroad, as to freight rates on shipments of live stock from Carmel to New York city. Charles E. Nichols appeared for himself; George H. Walker appeared for the New York Central and Hudson River Railroad Company. After hearing arguments the hearing was closed. Mr. Nichols and Mr. Walker, or other representatives of the company, are to confer as to the shipments of Mr. Nichols from Carmel and Yorktown on the New York and Putnam division to New York city, and report to this Board the result of their conference. (Case No. 3273.)

Adjourned hearing in the matter of the application of the Delaware and Eastern Railroad Company for a certificate under section 59 of the Railroad Law. H. D. Hinman for the applicant; John B. Kerr for the New York, Ontario and Western Railway Company, in opposition; Amos Van Etten for the Ulster and Delaware Railroad Company, in opposition. At the request of Mr. Hinman and without the taking of evidence the hearing was adjourned until Wednesday, June 7, 1905, 1 p. m., at the Court House, Kingston. (Case No. 3302.)

#### *Complaints.*

West End Board of Trade of Brooklyn against The Brooklyn Heights Railroad Company as to service rendered the public. Report, dated April 5, 1905, was received from the electrical expert as to steps taken by the company in the matters complained of. Ordered copy sent complainants. (Case No. 3253.)

Sutherland R. Haxtun against The Brooklyn Heights Railroad Company as to service rendered the public from the foot of Montague street, Brooklyn, on Saturday afternoon, and as to its service on the Brooklyn bridge from Manhattan at night after the rush hours. Report, dated April 7, 1905, as to service on the bridge received from the electrical expert. Ordered copies sent complainant and company. (Case No. 3312.)

Twenty-eighth Ward Board of Trade of Brooklyn against The Brooklyn Heights Railroad Company as to service rendered the public. Report, dated April 5, 1905, received from the electrical expert as to compliance with the recommendations of the Board. Ordered copy sent complainants. (Case No. 3254.)

In the matter of a complaint of Theodore Mullhollandnon as to the operation of freight cars on The Brooklyn Heights Railroad, a report, dated April 7, 1905, was received from the electrical expert. Ordered copy sent complainant. (Case No. 3296.)

In the matter of the complaint of W. B. Gonsalves against The Brooklyn Heights Railroad Company a report, dated April 5, 1905, was received from the electrical expert as to compliance with the recommendations of the Board. Ordered copies sent complainant and company. (Case No. 3296.)

In the matter of the recommendations of this Board, dated February 9, 1905, to The Brooklyn Heights Railroad Company, as to service rendered the public, a report, dated March 29, 1905, was received from the electrical expert as to compliance by the company with the recommendations. Letter written

company as shown by copy on file, as to when it will obtain additional cars necessary to comply with those recommendations which require additional cars which have not been complied with. (Case No. 3296.)

West Side Taxpayers' Association of New York city against the New York Central and Hudson River Railroad Company, in relation to steam railroad tracks on Eleventh avenue, between Thirtieth street and Sixtieth street. Ordered hearing set for Wednesday, April 26, 1905, 11 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3322.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing, a letter, dated March 30, 1905, was received from the city engineer of Rochester as to the acquirement of land of Adolph G. Schreck. Ordered letter written city engineer as shown by office original on file, dated April 3, 1905. (Grade Crossing Case No. 416.)

#### *Orders.*

Application of the Syracuse and South Bay Railway Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 2262.)

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

Battery Place Realty Company (April rent).....	\$150 00
C. E. Argersinger, P. M. (P. O. Box rent).....	4 00
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	\$154 00
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The Board adjourned.

**BUFFALO, APRIL 11, 1905.**

#### *Hearings.*

Adjourned hearing before Commissioner Dunn (by delegation of the Board) of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law. George L. Lewis for the applicant. Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company in opposition. Arthur E. Clark for himself and other property owners on East Main street, Batavia, in opposition. Without the hearing of arguments or taking of evidence a recess was taken until 2 p. m. (Case No. 3238.)

**AFTER RECESS—2 P. M.**

Present, Commissioner Dunn.

#### *Hearings.*

The adjourned meeting before Commissioner Dunn (by delegation of the Board) of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. Without the hearing of arguments or taking of evidence, the hearing was adjourned until Tuesday, May 2, 1905, 10 a. m., at the Hotel Iroquois in the city of Buffalo. (Case No. 3238.)

Bissell, Carey & Cooke (Mr. Carey appearing) and C. Peter Clark, second vice-president of the Buffalo and Susquehanna Railway Company, appeared before the Board in the matter of the application of the Buffalo and Susquehanna Railway Company, under section 60 of the Railroad Law, as to crossing streets and highways in Erie county, the appearance being as to the crossings in which no determination has yet been made (see determination of August 10, 1904) and in relation to the application of said company for a modification of the determination of the Board, dated August 10, 1904, as to crossing Clark street, in the town of Hamburg (see minutes of December 21, 1904). After hearing arguments the matter was adjourned until Wednesday, April 12, 1905. (Grade Crossing Case No. 478.)

*Crossings.*

Petition of the town board and commissioner of highways of the town of Amity, Allegany county, and of the Buffalo and Susquehanna Railway Company for a modification of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, in the application of said railway company as to crossing streets, avenues and highways in the county of Allegany, as to the railway crossing the highway known as the Plank road, said determination being that said crossing should be made at grade, the petition for modification asking that the railway be carried over said Plank road above grade, the petition for modification also being that a temporary overcrossing to carry the railway may be constructed pending the construction of the permanent overcrossing to carry the railway. Ordered carried on file. (Grade Crossing Case No. 479.)

Petition of the Buffalo and Susquehanna Railway Company, under section 60 of the Railroad Law, as to its railway crossing the Yorkshire road highway in the town of Yorkshire, Cattaraugus county, the company not proposing to cross the Yorkshire road highway in the town of Sardinia, Erie county, at which point this Board determined, under date of August 10, 1904, it should cross at grade. Ordered carried on file. (Grade Crossing Case No. 538.)

*Bill Approved.*

The following bill was approved:

*Grade Crossing Expenses.*

W. McNeilly (postage stamps)..... \$100 00

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BUFFALO, APRIL 12, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law (see minutes of March 9, 1905). Bissell & Riley (Mr. Bissell appearing) for the applicant. Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company in opposition; John S. Rockwell for the Buffalo, Rochester and Pittsburgh Railway Company in opposition; Elisha Lee for the Pennsylvania Railroad Company (Western New York and Pennsylvania Railway) in opposition; Norton, Penney & Sears (Mr. Sears appearing), generally, for the International Railway Company; George L. Lewis, generally, for the Buffalo, Batavia and Rochester Electric Railway Company; Moot, Sprague, Brownell & Marcy for the Erie Railroad Company, generally, and particularly as to the applicant's railroad crossing the Erie Railroad. After hearing evidence and arguments a recess in this matter was taken until 1:30 p. m. (Case No. 3277.)

Application of the president and trustees of the village of La Salle, Niagara county, under section 61 of the Railroad Law, for a determination as to whether Hamilton street in said village shall cross the New York Central and Hudson River Railroad, the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company over, under or at the grade of said railroads and rights of way. Alfred W. Gray for the applicant. Pooley & Spratt for the New York Central and Hudson River Railroad Company; Moot, Sprague, Brownell & Marcy for the Erie Railroad Company; and Bissell, Carey & Cooke for the Buffalo, Thousand Islands and Portland Railroad Company, in opposition; Mr. Spratt, of Pooley & Spratt, alone appearing. Mr. Spratt informed the Board that the companies had taken an appeal to the courts from the action of the village in this matter. Under these circumstances the Board determined not to proceed with this hearing until after the determination of the appeal. (Grade Crossing Case No. 532.)

The matter of the application of the Buffalo and Susquehanna Railway Company, under section 60 of the Railroad Law, as to crossing streets and highways in Erie county (see minutes of April 11, 1905) was heard. Bissell, Carey & Cooke (Mr. Carey appearing) and C. Peter Clark, second vice-president of the Buffalo and Susquehanna Railway Company, appeared for the company; Perry M. Thorn and John Schoepflin (supervisor) appeared for the town of Hamburg. After hearing arguments, which related wholly to the Clark street crossing, in which this Board has made a determination and in which the company has asked that the determination be modified, the matter was held open. (Grade Crossing Case No. 478.)

The Board took a recess until 1:30 p. m.

AFTER RECESS—1:30 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned until Monday, May 1, 1905, 10 a. m., at the Hotel Iroquois, Buffalo. (Case No. 3277.)

The Board adjourned.

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ROCHESTER, APRIL 13, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of the Delaware, Lackawanna and Western Railroad Company as to the division of the fifty per centum of the expense of the Geddes, Onondaga county, overcrossing of the New York Central and Hudson River Railroad, the West Shore Railroad (its lessor) and the Oswego and Syracuse Railroad (leased to and operated by the Delaware, Lackawanna and Western Railroad Company), between the Delaware, Lackawanna and Western Railroad Company and the New York Central and Hudson River Railroad Company (this division of expense having been determined by this Board under date of January 12, 1905), which was to have been held in Rochester on this date, was not held, the attorneys for the companies having agreed to a postponement to a date to be thereafter fixed. (Grade Crossing Case No. 174.)

Adjourned hearing in the matter of the application of the Albion and Rochester Railway (street surface) for a certificate under section 59 of the Railroad Law. Charles B. Hill, A. K. Potter, Dudley Phelps and W. W. Storrs for the applicant. W. C. Ramsdale for the board of trustees of the village



of Albion in favor of the application. Bert W. Brown for the village of Spencerport in favor of the application. Isaac S. Signor for the village of Holley in favor of the application. John S. Rockwell for the Buffalo, Rochester and Pittsburg Railway Company as to proposed crossings by the applicant's railroad of said railway. Edward Harris, Jr., for the New York Central and Hudson River Railroad Company in opposition to the application. After hearing evidence and arguments a recess was taken until 2. p. m. (Case No. 3224.)

— AFTER RECESS—2 P. M. —

Present, Commissioners Dunn and Dickey.

*Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the Ionia and East Bloomfield road highway grade crossing of the Auburn branch of the New York Central and Hudson River Railroad, in the town of West Bloomfield, Ontario county, and the construction of a new piece of highway and an undercrossing of said railroad, proposals of contractors for the substructural work and work on new piece of highway were submitted to the Board by the company, together with a report thereon, dated April 7, 1905, from the superintendent of the grade crossing bureau. Ordered approved the proposal of J. W. Dwyer, for this substructural work and work on new piece of highway, unit prices, estimated to amount in total to five thousand and six dollars (\$5,006). (Grade Crossing Case No. 396.)

*Hearings.*

The hearing in the matter of the application of the Albion and Rochester Railway (street surface) for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned until Wednesday, April 19, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3224.) The applicant has closed its case, except in rebuttal.

The adjourned hearing in the matter of the application of the Albion and Lockport Railway for a certificate under section 59 of the Railroad Law, which was set for this date, was not taken up on this date, the Albion and Rochester Railway having occupied the entire day. The matter of the Albion and Lockport Railway application was adjourned until Wednesday, April 19, 1905, 10 a. m., at the office of the Board in Albany. On April 19 the opposition is to proceed. (Case No. 3223.)

The Board adjourned.

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ALBANY, APRIL 18, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

The minutes of the meetings of March 24 and 30, and April 6, 7, 11, 12 and 13 were read and approved.

*Hearings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 13, 1900, as to changing the Chatham street, Niverville, town of Kinderhook, Columbia county, grade crossing of the Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) to an undercrossing of said railroad, and modified determination contained in a letter dated June 8, 1903, from this Board to Walter Shepard, chief engineer, Boston and Albany Railroad. A. B. Gardinier for the New York Central and Hudson River Railroad Company, and Farrar & Becker (Mr. Becker appearing) for the town of Kinderhook, appeared before the Board in relation to an accounting and settlement

of legal expenses by the town and company in a suit in the courts brought by Albert T. Smith, as trustee, against the Boston and Albany Railroad, the New York Central and Hudson River Railroad and the town of Kinderhook for consequential damages to abutting real property. The suit has been determined by the Court of Appeals against the plaintiff. After hearing arguments the Board determined that the legal expenses in this suit are a part of the expense of the elimination of this crossing. An accounting and settlement for this expense will be submitted to the Board in the future. (Grade Crossing Case No. 160.)

Application of the Syracuse and South Bay Railway Company for consent to the issue of a first mortgage for \$300,000. Louis L. Waters, Robert E. Drake and Frederick T. Pierson for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3328.)

Application of the Keeseville, Ausable Chasm and Lake Champlain Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad shall cross the New York and Canada Railroad (leased to and operated by The Delaware and Hudson Company) at Port Kent, above, below or at the grade of said last-named railroad. Thomas O'Connor for the applicant; Lewis E. Carr for The Delaware and Hudson Company and the New York and Canada Railroad Company. Without the hearing of evidence or arguments the hearing was adjourned until Tuesday, May 9, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3315.)

Application of the Rochester Railway Company for approval of an increase of its capital stock from \$5,500,000 to \$6,000,000. Charles J. Bissell for the applicant. After hearing arguments the application was granted. (Case No. 3331.)

Application of the Rochester, Syracuse and Eastern Railroad Company for consent to the issue of a first mortgage for seven million five hundred thousand dollars (\$7,500,000). William Nottingham for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3329.)

Application of the Rochester, Syracuse and Eastern Railroad Company for approval of an increase of its common capital stock from one million dollars (\$1,000,000) to three million five hundred thousand dollars (\$3,500,000), total stock preferred and common, with such increase will amount to six million dollars (\$6,000,000). William Nottingham for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3326.)

#### *Complaints.*

Bayer & McConihe, of Troy, against the Troy and New England Railway Company as to shipments of freight. This complaint not being specific, complainants were asked to make specific complaint. (Case No. 3333.)

S. W. Turner against the Interborough Rapid Transit Company (Manhattan Railway division) as to the One Hundred and Sixteenth street and Eighth avenue station of the Manhattan Railway. Letter dated April 7, 1905, received from the company as to compliance with the Board's recommendations. Ordered copy sent the electrical expert with instructions to communicate with the Board in relation to the statements in the company's letter as to the statements in his report dated January 23, 1905. (Case No. 3275.)

J. C. Brackenridge, Commissioner of Public Works, Borough of Brooklyn, New York city, against the Long Island Railroad Company as to the use of the electric third rail for motive power on Atlantic avenue, Brooklyn. A letter on this subject, dated April 6, 1905, was received from the general solicitor of the Long Island Railroad Company. Ordered that the electrical expert make a report in this matter. (Case No. 3320.)

John C. Raymond against the Staten Island Rapid Transit Railway Company as to the condition of its yard at New Brighton (St. George). Report dated April 4, 1905, received from the inspector. Copy sent complainant. Closed. (Case No. 3324.)

F. Friedleben against the New York Central and Hudson River Railroad Company, as lessee of the New York and Harlem Railroad, as to passenger fare from Grand Central Station to Wakefield, being 28 cents, the complaint alleging that the fare from Grand Central Station to Tremont is 10 cents

and from Tremont to Wakefield 15 cents, a total of 25 cents. Answer of company received. Copy sent complainant. Reply of complainant to answer of company received. Closed. (Case No. 3317.)

Board of Trade of the Eastern District of Brooklyn against The Brooklyn Heights Railroad Company as to the operation of its Meeker avenue surface line. Copy sent company, The electrical expert has been instructed to make a report in this matter. (Case No. 3330.)

Edwin M. Dorland of Old Chatham against the Rutland Railroad Company as to the condition of fence of said company along his land. Copy sent company. This case was closed on the minutes of September 15, 1903, and is now reopened. (Case No. 2914.)

West End Board of Trade against The Brooklyn Heights Railroad Company as to service rendered the public. Letter dated April 4, 1905, received from the company. Ordered filed. This case was reopened on the minutes of March 30, 1905. Ordered again closed. (Case No. 3253.)

In the matter of the complaint of the Property Owners' Association of the Twenty-third Ward, Borough of the Bronx, New York city, Woodlawn Taxpayers' Association, and McLean Taxpayers' Association, as to service rendered the public in the borough of the Bronx by the Union Railway Company and the Interborough Rapid Transit Company (Manhattan Railway division), a communication, dated April 11, 1905, was received from the Throggs Neck Taxpayers' Association. Ordered filed. (Case No. 3259.)

In the matter of the recommendations of this Board, dated February 9, 1905, to The Brooklyn Heights Railroad Company as to service rendered the public, a letter dated April 8, 1905, was received from the company as to its obtaining additional cars for its Broadway elevated line, Fulton street elevated line, Nostrand avenue surface line and Third avenue surface line, as recommended by the Board, said letter being in response to letter to the company from this Board of the 7th inst. Ordered filed. (Case No. 3296.)

#### *Applications.*

Application of the War Department, under section 51 of the Railroad Law, as to the use of stoves for cooking purposes in baggage cars in trains in this State to be used to transport the Ninth U. S. Infantry from Sackett's Harbor to the State line, starting on or about the 23d inst. Consent granted. (Case No. 3327.)

Application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, May 16, 1905, 10 a. m., at the Rathbun House, Elmira. (Case No. 3323.)

Application of the Bronx, Yonkers and White Plains Railway Company for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, May 23, 1905, 10 a. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3319.)

Application of the Bush Terminal Railroad Company for approval of an increase of its capital stock from fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000). Granted without a hearing. (Case No. 3325.)

Application of the Brooklyn Union Elevated Railroad Company (leased to and operated by The Brooklyn Heights Railroad Company), under section 68 of the Railroad Law, as to an existing crossing at grade of said company's railroad (old Sea View elevated railroad) and the Coney Island and Brooklyn Railroad (street surface). Ordered hearing set for Tuesday, May 23, 1905, 11 a. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3332.)

In the matter of the application of The New York, Auburn and Lansing Railroad Company, under section 68 of the Railroad Law, as to crossing the Lehigh Valley Railroad above, below or at the grade of the Lehigh Valley Railroad at Auburn, it being proposed that the crossing be above grade, a letter dated April 6, 1905, was received from Greenfield & Aiken, attorneys for the applicant, to the effect that its engineer has been unable to confer with the engineer of the Lehigh Valley Railroad Company as to the proposed overhead structure. Ordered that the superintendent of the grade

crossing bureau make a report in this matter, accompanied if necessary by a plan made by him for the proposed overhead structure. (Case No. 3292.)

Application of the International Railway Company, under section 103 of the Railroad Law, as to abandonment of a portion of its route in the city of Buffalo, viz., in South Division street, between Cedar street and Spring street; in Spring street, between South Division street and William street; in William street, between Spring street and Mortimer street; in Mortimer street, between William street and Peckham street; in Peckham street, between Mortimer street and Smith street; in Smith street, between Peckham street and Broadway; in Broadway, between Smith street and Herman street; and in Herman street, between Broadway and Best street. Ordered hearing set for Tuesday, May 2, 1905, 2 p. m., at the Hotel Iroquois, Buffalo. (Case No. 3318.)

In the matter of the determination of this Board, under subdivision 10 of section 4 of the Railroad Law, dated February 18, 1903, in the matter of the application of the Erie Railroad Company for consent to the issue of a mortgage for fifty million dollars (\$50,000,000), a paper, signed and sworn to by F. D. Underwood, president, and David Bosman, secretary, of said company, was filed with this Board April 6, 1905, showing action of the directors of said company at a meeting on March 29, 1905, increasing the common capital stock of said company, under the provisions of subdivision 10 of section 4 of the Railroad Law, from one hundred and thirteen million dollars (\$113,000,000) to one hundred and thirty-three million dollars (\$133,000,000), the total capital stock (including preferred) being increased from one hundred and seventy-seven million dollars (\$177,000,000) to one hundred and ninety-seven million dollars (\$197,000,000) for the purpose of converting bonds under said mortgage into stock. (Case No. 2849.)

#### *Reports.*

In the matter of the report of the superintendent of the grade crossing bureau, dated March 4, 1905, as to a temporary timber bridge of the Hudson Valley Railway Company over The Delaware and Hudson Company's railroad at Broadway, Fort Edward, a letter dated April 14, 1905, was received from the company enclosing a letter from its engineer as to proposed strengthening of this bridge, and a report dated April 18, 1905, on said letter as to the strengthening of the bridge was submitted to the Board by the superintendent of the grade crossing bureau. Ordered that the company be notified that in the opinion of the Board the strengthening of the bridge as set forth in said letter from its engineer should be carried out. (Case No. 3321.)

A report, dated April 17, 1905, was received from the superintendent of the grade crossing bureau as to steel rail guard-rail to be substituted by the Niagara Gorge Railroad for wooden guard-rail on its line. A letter on this subject, dated April 7, 1905, was received from the company. Ordered letter written the company, as shown by copy on file. (Case No. 2279.)

A letter, dated April 12, 1905, was received from the Cortland County Traction Company to the effect that the copper trough was being constructed on its trolley wire at the crossing at grade of its railroad and the Syracuse, Binghamton and New York Railroad on Elm street, Cortland; and as to derailling switches in its track. The electrical expert is to report as to derailling switches. (Case No. 2677.)

In the matter of the recommendation of this Board, growing out of a report of the inspector, dated February 23, 1905, as to a rear collision between freight trains on the Schenectady detour of the New York Central and Hudson River Railroad Company, January 1, 1905, near Hoffmans, a letter, dated April 8, 1905, was received from the company as to compliance with the recommendation. Ordered further letter written the company as to compliance with this recommendation. (Steam Case No. 1—1905.)

Report of the superintendent of the grade crossing bureau, dated February 15, 1905, as to the derailment of a passenger train at St. Johnsville, February 8, 1905. Ordered report returned to the superintendent of the grade crossing bureau. (Steam Case No. 17—1905.)

Report of the superintendent of the grade crossing bureau, dated April 4, 1905, as to a rear end collision between freight trains on the Erie Railroad near Otisville, February 7, 1905. Ordered copy sent company. (Steam Case No. 16—1905.)

In the matter of the report of the electrical expert of this Board, dated March 2, 1905, as to a head-on collision between cars on the Rochester and Eastern Rapid Railway at the Emerson curve, November 19, 1904, a letter, dated April 10, 1905, was received from the company stating that its method of issuing train orders had been changed as referred to in said report. Ordered filed. (Street Case No. 48—1904.)

#### *Crossings.*

Application of the highway commissioner of the town of Union, Broome county, under section 61 of the Railroad Law, for a determination as to whether a new highway in said town, running north from the Main River road through lands of the Endicott Land Company, to be known as McKinley avenue, shall cross the Erie Railroad over, under or at the grade of said railroad. Ordered hearing set for Tuesday, May 16, 1905, 5 p. m., at the Rathbun House, Elmira. (Grade Crossing Case No. 537.)

Petition of the Syracuse, Binghamton and New York Railroad Company, under section 62 of the Railroad Law, as changing a grade crossing of its railroad by a highway known as the Cortland and Homer road, in the town of Cortlandville, Cortland county, to an overcrossing to be located at a different point, which will include the construction of a new piece of highway. Ordered filed. (Grade Crossing Case No. 539.)

In the matter of the petition of the town board of the town of Southampton, Suffolk county, under section 62 of the Railroad Law, as to changing the River road highway grade crossing of the Long Island Railroad to an overcrossing to be constructed in the line of the present crossing, a report, dated April 7, 1905, was received from the superintendent of the grade crossing bureau. Ordered filed. (Grade Crossing Case No. 528.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 2, 1902, as to the changing of the Prior's road or Manhasset and Old Westbury road grade crossing of the Long Island Railroad in the town of North Hempstead, Nassau county, to an undercrossing, a report, dated March 30, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 312.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 25, 1904, as to changing the Chautauqua road or Valley street (or Lake road) grade crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) in Mayville to an overcrossing, plans and specifications for this work were submitted to the Board, together with a report thereon, dated April 10, 1905, from the superintendent of the grade crossing bureau. These plans are detailed plans for the entire structure, including substructure and superstructure—the plan for which was approved on the minutes of March 9, 1905. Ordered approved these plans and specifications, the specifications being for the substructure and the specifications for the superstructure to be Cooper's standard specifications for 1901. The estimate for this work made by the superintendent of the grade crossing bureau is approximately \$27,000 to \$28,000, and is approved by the Board. (Grade Crossing Case No. 491.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, supplemental specifications for the steel work for the bridges were submitted to the Board by the company, together with a report thereon, dated April 10, 1905, from the superintendent of the grade crossing bureau. Ordered said supplemental specifications approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing, a plan showing proposed changes in sewers at this undercrossing was submitted to the Board by the company, together with a report thereon dated April 18, 1905, from the superintendent of the grade crossing bureau. Ordered said plan approved. (Grade Crossing Case No. 416.)

In the matter of the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to changing the Peek and Nott street grade crossings of its Troy and Schenectady branch in Schenectady to undercrossings, a changed plan was submitted to the Board by the company. Ordered filed. In this matter a letter, dated April 8, 1905, was received from the company in answer to a letter of this Board of April 5, 1905, as to special appropriation to pay the State's appropriation of this work. Ordered filed. (Grade Crossing Case No. 477.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a report, dated April 3, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, a report dated April 3, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 390.)

#### *Orders.*

Application of the Rochester Railway Company for approval of an increase of its capital stock from \$5,500,000 to \$6,000,000. Granted. (Case No. 3331.)

Application of the War Department, under section 51 of the Railroad Law, as to the use of stoves for cooking purposes in baggage cars in trains in this State to be used to transport the Ninth U. S. Infantry from Sackett's Harbor to the State line on or about the 23d inst. Granted. (Case No. 3327.)

Application of the Bush Terminal Railroad Company for approval of an increase of its capital stock from fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000). Granted. (Case No. 3325.)

Application of the Syracuse and South Bay Railway Company for consent to the issue of a first mortgage for three hundred thousand dollars (\$300,000). Granted. (Case No. 3328.)

Application of the Rochester, Syracuse and Eastern Railroad Company for consent to the issue of a first mortgage for seven million five hundred thousand dollars (\$7,500,000). Granted, as shown by office original determination on file, on condition that but two million dollars (\$2,000,000) bonds shall be issued under said mortgage under this consent and on condition that before the remaining five million five hundred thousand dollars (\$5,500,000) bonds or any portion thereof under said mortgage shall be issued application shall be made to this Board for consent to the issue of said five million five hundred thousand dollars (\$5,500,000) bonds or any portion thereof under said mortgage. (Case No. 3329.)

Application of the Rochester, Syracuse & Eastern Railroad Company for approval of an increase of its capital stock from one million dollars (\$1,000,000) to three million five hundred thousand dollars (\$3,500,000). Granted. The total capital stock, preferred and common, with such increase will amount to six million dollars (\$6,000,000). (Case No. 3326.)

The Board adjourned.

ALBANY, APRIL 19, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Adjourned hearings in the matter of the application of the Albion and Rochester Railway (street surface) for a certificate under section 59 of the Railroad Law (Case No. 3224), and in the matter of the application of the Albion and Lockport Railway for a certificate under section 59 of the Railroad Law (Case No. 3223). These adjourned hearings were held as one hearing. Charles B. Hill and Dudley Phelps for the applicants; Albert H. Harris for the New York Central and Hudson River Railroad Company in opposition to the applications. The applicant filed six petitions in favor of granting the application of the Albion and Rochester Railway, which it had reserved the right to file. Mr. Harris, in opposition, did not present any evidence, and after arguments the evidence was closed. The arguments were not summed up, but were short statements by Mr. Hill and Mr. Harris, particularly in reference to the payment of the ten per cent. of the capital stock.

*Applications.*

In the matter of the determination of this Board, dated April 7, 1905, granting a certificate under section 59 of the Railroad Law to the Syracuse and South Bay Railway Company, a writ of certiorari on behalf of W. L. Barnum, who had appeared in opposition, and others, was served on the Board. Ordered turned over to the Attorney-General. (Case No. 2262.)

*Bills Approved.*

The following bills were approved:

*General Expenses.*

Charles R. Barnes (expenses).....	\$110 00
J. D. Shultz (expenses).....	22 00
W. M. Davis (expenses).....	62 50
John J. Farley (expenses).....	16 50
Karl F. Colson (expenses).....	22 00
Western Union Telegraph Company (January).....	1 92
Western Union Telegraph Company (February).....	4 17
Western Union Telegraph Company (March).....	12 80
Postal Telegraph-Cable Company.....	30 67
Hudson River Telephone Company (February).....	39 17
Hudson River Telephone Company (March).....	38 92
National Express Company.....	3 98
American Express Company.....	5 68
Street Railway Journal.....	4 00
National Railway Publication Company.....	8 00
The Engineering Record.....	3 00
Brandow Printing Company (February).....	6 67
Brandow Printing Company (March).....	2 50
J. B. Lyon Company.....	10 00
"Klips," E. C. Cuyler, Secy.-Treas.....	25 00
Thomas J. Cowell.....	8 50
The Smith-Premier Typewriter Company.....	22 12
John R. McClellan.....	23 05
James Nolan.....	19 00
F. D. Sargent.....	2 40
Great Bear Spring Company.....	3 30
American Ice Company (New York office).....	6 20
New York Telephone Company (New York office).....	21 40
Economy Clean Towel Supply Co. (New York office)...	6 00
H. L. Townsend.....	6 38

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\$547 73

## MINUTES OF THE BOARD.

*Grade Crossing Expenses.*

A. H. Sutermeister (expenses).....	\$29 45
James E. Brazee (expenses).....	28 50
F. E. Colwell & Co.....	1 96
W. & L. E. Gurley.....	1 48
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	\$61 39
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The Board adjourned.

NEW YORK, APRIL 26, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Application of the city of New York, under section 61 of the Railroad Law, for a determination as to whether East One Hundred and Sixty-seventh street in the Borough of the Bronx in said city shall cross the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. R. H. Mitchell, assistant corporation counsel, for the city; Charles Baxter for the Property Owners' Association of the Twenty-third Ward, in favor of the application; George H. Walker for the New York Central and Hudson River Railroad Company. It was stated by Mr. Mitchell that for the present the city only desired a determination that a bridge for foot passengers should be constructed at the point in question and not a bridge to carry vehicles. Mr. Walker desired further time in which to state the position of the company in the matter. After discussion the hearing was held open, pending a possible further hearing. If there is no further hearing, the hearing is to be considered closed on this date. (Grade Crossing Case No. 529.)

Application of the Wallkill Transit Company for consent to the issue of a first mortgage for \$350,000. W. B. Royce for the applicant. After hearing arguments the hearing was closed. (Case No. 3339.)

West Side Taxpayers' Association of New York city against the New York Central and Hudson River Railroad Company as to its tracks on Eleventh avenue between Thirtieth and Sixtieth streets and operation of freight trains on said tracks. Henry G. Schneider for the complainants; A. H. Harris for the New York Central and Hudson River Railroad Company. After hearing arguments the hearing was closed. The inspector of grade crossings is to report to the Board in this matter. (Case No. 3322.)

*Orders.*

Application of the Wallkill Transit Company for consent to the issue of a first mortgage for \$350,000. Ordered granted on condition that but \$300,000 bonds under said first mortgage shall be issued under this consent, and that before the issuance of the remaining \$50,000 bonds under said first mortgage or any portion thereof, application shall be made to this Board for consent to the issuance of said \$50,000 bonds or any portion thereof. (Case No. 3339.)

It was ordered that the Wallkill Transit Company be required, under section 36 of the Railroad Law, to install derailling switches in its railroad at the point where its railroad crosses the Erie Railroad in North street, Middletown. (Case No. 3340.)

The Board adjourned.

NEW YORK, APRIL 27, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.



*Hearings.*

Adjourned hearing in the matter of complaints of the Van Nest Property Owners' Association (Case No. 3236) against the Union Railway Company; Property Owners' Association of the Twenty-third Ward, Borough of the Bronx, New York city; Woodlawn Taxpayers' Association, McLean Heights Taxpayers' Association and Throggs Neck Taxpayers' Association (Case No. 3259) in the matter of service rendered the public in the Borough of the Bronx by the Union Railway Company and Interborough Rapid Transit Company (Manhattan Railway division); investigation by the Board of traffic conditions on the Union Railway of New York city (Case No. 3154). At this hearing were heard those who appeared in relation generally to service rendered the public by the Union and Yonkers railways and the Interborough Rapid Transit Company. Charles Baxter and A. C. Hottenroth for the Twenty-third Ward Taxpayers' Association; J. A. Goulden and L. Fielding Marshall for the North Side Board of Trade; William A. Cokeley for the Throggs Neck Taxpayers' Association; Herman G. Freedman for the South Bronx Property Owners' Association; John H. Dougherty for citizens of the Thirty-fourth Assembly District living on Willis avenue; E. A. Maher and H. A. Robinson for the Union Railway Company; Frank Hedley for the Interborough Rapid Transit Company. After hearing evidence and arguments the hearing was adjourned until Wednesday, May 24, 1905, at 11 a. m., at the Hotel Bronxland, Willis avenue and One Hundred and Thirty-fourth street, New York city. Mr. Marshall at this hearing presented certain affidavits, six of which (being Nos. 7, 8, 9, 10, 11 and 12) he took to have properly verified and he is to return them to the Board.

The Board adjourned.

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ALBANY, APRIL 29, 1905.

A report was received from the superintendent of the grade crossing bureau as to the condition of structures on the Troy and New England Railway and to some extent as to the condition of its track. Ordered copy sent company with a letter of recommendation as to the structures and referring to the condition of the track, as shown by office original letter on file. This was done by direction of Chairman Dunn over the telephone. (Case No. 2886.)

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BUFFALO, MAY 1, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 69 of the Railroad Law. Bissell & Riley (Mr. Bissell appearing) for the applicant. Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company in opposition. John S. Rockwell for the Buffalo, Rochester and Pittsburg Railway Company in opposition. Elisha Lee for the Pennsylvania Railroad Company (Western New York and Pennsylvania Railway) in opposition. George L. Lewis, generally, for the Buffalo, Batavia and Rochester Electric Railway Company. After hearing evidence and arguments a recess was taken until 2 p. m. (Case No. 3277.)

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned to a date to be thereafter fixed. Subsequently, this date was fixed for Thursday, May 18, 1905, 2 p. m., at the Hotel Iroquois, Buffalo. On this date the applicant closed its case, except in rebuttal. A motion for dismissal of the application was made by Mr. Spratt, on which the Board reserved decision. Testimony as to the *bona fides* of the enterprise and of the financial ability of the projectors to build the road will be heard by the Board in executive session at its New York office, room 406, Whitehall building, 17 Battery place, New York city. on Tuesday, May 23, 1905, at 2 p. m. (Case No. 3277.)

The Board adjourned.

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**BUFFALO, MAY 2, 1905.**

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law. George L. Lewis for the applicant. Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company in opposition. Arthur E. Clark for himself and other property owners on East Main street, Batavia, in opposition. Mr. Spratt moved that the application be dismissed, on which motion the Board reserved decision. The opposition proceeded with evidence in opposition. After hearing evidence and arguments a recess was taken in this matter until 2:15 p. m. (Case No. 3238.)

The Board took a recess until 2 p. m.

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**AFTER RECESS—2 P. M.**

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

Application of the International Railway Company, under section 103 of the Railroad Law, as to abandonment of a portion of its route in the city of Buffalo, viz., in South Division street, between Cedar street and Spring street; in Spring street, between South Division street and William street; in William street, between Spring street and Mortimer street; in Mortimer street, between William street and Peckham street; in Peckham street, between Mortimer street and Smith street; in Smith street, between Peckham street and Broadway; in Broadway, between Smith street and Herman street; and in Herman street, between Broadway and Best street. Porter Norton for the applicant. No one else appeared. After hearing arguments the hearing was closed. (Case No. 3318.)

The hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned until Thursday, May 18, 1905, at 10 a. m., at the Hotel Iroquois, Buffalo.

*Orders.*

Application of the International Railway Company, under section 103 of the Railroad Law, as to abandonment of a portion of its route in the city of Buffalo, viz., in South Division street, between Cedar street and Spring

street; in Spring street, between South Division street and William street; in William street, between Spring street and Mortimer street; in Mortimer street, between William street and Peckham street; in Peckham street, between Mortimer street and Smith street; in Smith street, between Peckham street and Broadway; in Broadway, between Smith street and Harman street; and in Herman street, between Broadway and Best street. Granted. (Case No. 3318.)

The Board adjourned.

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ALBANY, MAY 9, 1905.

*Hearings.*

Adjourned hearing (before Commissioner Dunn by delegation of the Board) in the matter of the application of the Keeseville, Ausable Chasm and Lake Champlain Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad shall cross the New York and Canada (leased to and operated by The Delaware and Hudson Company) at Port Kent, above, below or at the grade of said last named railroad. Thomas O'Connor for the applicant; Lewis E. Carr for The Delaware and Hudson Company and the New York and Canada Railroad. Without the hearing of evidence or arguments the hearing was adjourned on the application of Mr. Carr. until Thursday, June 1, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3315.)

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ELMIRA, MAY 16, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law. Boyd McDowell and Theodore R. Tuthill for the applicant; Frank A. Bell for John Wilson and others, in opposition to the route proposed by the company; John B. Stanchfield for the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company, in opposition; Thomas O'Connor for the Elmira and Waverly Railway Company, in opposition; J. B. Fisher for the Waverly, Sayre and Athens Traction Company, in opposition. After hearing evidence and arguments a recess in this matter was taken until 2 p. m. (Case No. 3323.)

Application of The Elmira and Waverly Railway Company for a certificate under section 59 of the Railroad Law. Thomas O'Connor and George McCann for the applicant; Boyd McDowell and Theodore R. Tuthill for the Chemung Valley Traction Company, in opposition; John B. Stanchfield for the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company in opposition. The applicant stated that it was not ready to proceed, owing to its not having completed publication of its articles of association. Later in the day the applicant asked permission to withdraw this application and make a new application accompanied with proof of publication of its articles of association, which leave was granted by the Board. This case is therefore closed. When the new application is received by the Board a hearing will be set on it for Tuesday, June 13, 1905, 10 a. m., at the Court House, Elmira. (Case No. 3311.)

Application of the Corning and Painted Post Street Railway, under section 68 of the Railroad Law, as to crossing the Erie Railroad at a point in the town of Corning, Steuben county, near what is known as the Caton road, it being proposed that the crossing be an undercrossing. Thomas O'Connor for the applicant; George N. Orcutt and John B. Stanchfield for the Erie Railroad Company, in opposition. After hearing arguments the Board decided that it would hold this case open until the litigation as to their right to construct their line is determined. Arguments in this matter were heard after recess as well as before recess. (Case No. 3316.)

A recess was taken until 2 p. m.

## AFTER RECESS—2 P. M.

The Board again met. All the Commissioners present.

*Hearings.*

The hearing in the application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned until Tuesday, June 13, 1905, 10 a. m., at the Court House, Elmira. (Case No. 3323.)

Application of the highway commissioner of the town of Union, Broome county, under section 61 of the Railroad Law, for a determination as to whether a new highway in said town, running north from the Main River road through lands of the Endicott Land Company, to be known as McKinley avenue, shall cross the Erie Railroad over, under or at the grade of said railroad. It is proposed that the new highway shall cross the railroad above grade. E. C. Moody for the applicant. After hearing arguments the hearing was adjourned until Monday, May 22, 1905, 9 a. m., before Commissioner Dunn, at his office in Binghamton. (Grade Crossing Case No. 537.)

The Board adjourned.

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BUFFALO, MAY 18, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law. George L. Lewis for the applicant; Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company, in opposition; Arthur E. Clark for himself and other property owners on East Main street, Batavia, in opposition. Without the taking of evidence or hearing of arguments the hearing was adjourned until Tuesday, May 23, 1905, 2:30 p. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery place, New York city. (Case No. 3238.)

Adjourned hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law. Bissell & Riley (Mr. Bissell appearing) for the applicant; Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company, in opposition; George L. Lewis generally for the Buffalo, Batavia and Rochester Electric Railway Company. After hearing evidence and arguments a recess was taken until 2 p. m. The hearing in this matter was set for 2 p. m. on this date, but inasmuch as all those appearing were present at 10 a. m. and the first hearing above referred to having been adjourned, this matter was taken up shortly after 10 a. m. (Case No. 3277.)

## AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn and Dickey.

*Hearings.*

The hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning with the following additional appearances, John S. Rockwell for the Buffalo, Rochester and Pittsburgh Railway Company, in opposition; Frank Rumsey for the Pennsylvania Railroad Company (Western New York and Pennsylvania Railway), in opposition; Arthur E. Clark for himself, in opposition; Mr. Spratt also stated

that he appeared for Mrs. Josephine Looney of Looneyville, a property owner, in opposition. After hearing evidence and arguments further the hearing was adjourned until Tuesday, May 23, 1905, 2 p. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery place, New York city. (Case No. 3277.)

Bissell, Carey & Cooke (Mr. Carey appearing) appeared before the Board in the matter of the application of the Buffalo and Susquehanna Railway Company, under section 60 of the Railroad Law, in relation to the application of said company for a modification of the determination of the Board, dated August 10, 1904, as to crossing Clark street in the town of Hamburg (see minutes of December 21, 1904, and April 11 and 12, 1905), the modification asked for being that the highway shall be carried over the steam railroad above grade instead of the steam railroad crossing the highway above grade. Mr. Carey made statements to the Board in relation to the proposed modification. (Grade Crossing Case No. 478.)

The Board adjourned.

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BINGHAMTON, MAY 22, 1905.

*Hearings.*

Adjourned hearing before Commissioner Dunn (by delegation of the Board), in the matter of the application of the highway commissioner of the town of Union, Broome county, under section 61 of the Railroad Law, for a determination as to whether a new highway in said town running north from the Main River road through lands of the Endicott Land Company, to be known as McKinley avenue, shall cross the Erie Railroad over, under or at the grade of said railroad. It is proposed that the new highway shall cross the railroad above grade. E. C. Moody for the applicant. An agreement with the Erie Railroad Company and plan of overhead structure was filed with the Board. Closed. (Grade Crossing Case No. 537.)

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NEW YORK, MAY 23, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Application of the Bronx, Yonkers and White Plains Railway Company for a certificate under section 59 of the Railroad Law. Frank V. Millard for the applicant; Francis A. Winslow for the city of Yonkers; H. T. Dykman, corporation counsel, for the village of White Plains; Alfred E. Smith for the Yonkers and White Plains Railway Company, in opposition; A. J. Hart; C. C. Paulding for the New York Central and Hudson River Railroad Company, in opposition. Without the hearing of arguments or taking of evidence, the hearing was adjourned until Tuesday, June 20, 1905, 10:30 a. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery place, New York city. (Case No. 3319.)

Application of the Brooklyn Union Elevated Railroad (leased to and operated by The Brooklyn Heights Railroad Company), under section 68 of the Railroad Law, as to an existing crossing at grade of said company's railroad (old Sea View Elevated Railroad) and the Coney Island and Brooklyn Railroad (street surface). John L. Wells for the applicant; W. N. Dykman for the Coney Island and Brooklyn Railroad, in opposition. After hearing evidence and arguments the hearing was adjourned indefinitely. The applicant did not finish its case. (Case No. 3332.)

The Board considered letters to the counsel to the Governor in relation to bills pending before the Governor as to which its opinions were asked, and ordered said letters sent to the counsel to the Governor.

*Orders.*

Application of the highway commissioners of the town of Union, Broome county, under section 61 of the Railroad Law, for a determination as to whether a new highway in said town running north from the Main River road through lands of the Endicott Land Company, to be known as McKinley avenue, shall cross the Erie Railroad over, under or at the grade of said railroad. Determination, as shown by office original determination on file that the crossing shall be over the grade of the Erie Railroad.. (Grade Crossing Case No. 537.)

The Board took a recess until 2 p. m.

*AFTER RECESS—2 P. M.*

The Board again met. Present Commissioners Dunn, Baker and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law. George L. Lewis for the applicant; Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company, in opposition; Arthur E. Clark for himself and other property owners on East Main street, Batavia, in opposition. After hearing evidence and arguments the opposition closed its case, and Mr. Lewis reserved the right to inform the Board later whether he wanted to offer evidence in rebuttal. Subsequently and under date of May 23, Mr. Lewis informed the Board by letter that he did not want to offer evidence in rebuttal. There has been no agreement as to summing up or filing of briefs in this case. On this date the matter of the *bona fides* and financial ability of the company to construct the proposed railroad was heard in executive session, all of the Commissioners being present. (Case No. 3238.)

Adjourned hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law. Bissell & Riley (Mr. Bissell appearing) for the applicant; Pooley & Spratt (Mr. Spratt appearing) for the New York Central and Hudson River Railroad Company and for Mrs. Josephine Looney, of Looneyville, a property owner, in opposition; George L. Lewis generally for the Buffalo, Batavia and Rochester Electric Railway Company; Arthur E. Clark for himself in opposition. After hearing evidence and arguments the evidence was closed. The matter is to be summed up before the Board in Albany by Mr. Bissell and Mr. Spratt and Mr. Clark on Thursday, June 1, 1905, at 2. p. m. On this date the matter of the *bona fides* and financial ability of the company to construct the proposed railroad was heard in executive session, all of the Commissioners being present. (Case No. 3277.)

The Board adjourned.

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NEW YORK, MAY 24, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Adjourned hearing in the matter of complaints of the Van Nest Property Owners' Association (Case No. 3236) against the Union Railway Company; Property Owners' Association of the Twenty-third Ward, Borough of the Bronx, New York city, Woodlawn Taxpayers' Association, McLean Heights Taxpayers' Association and Throggs Neck Taxpayers' Association (Case No. 3259) in the matter of service rendered the public in the Borough of the Bronx by the Union Railway Company and the Interborough Rapid Transit Company (Manhattan Railway division); investigation by the Board of

traffic conditions on the Union Railway of New York city (Case No. 3154). Charles Baxter and A. C. Hottenroth for the Twenty-third Ward Taxpayers' Association; J. A. Goulden and L. Fielding Marshall for the Northside Board of Trade; Oscar Smith for the Taxpayers' Association of Edenwald; E. A. Maher and H. A. Robinson for the Union Railway Company. After hearing evidence and arguments the hearing was closed except that if the Board wants further information from either side it will call for it.

Application of the Auburn and Northern Electric Railroad Company for consent to the issue of a first mortgage for \$1,000,000. William Nottingham for the applicant. After hearing arguments the hearing was closed. (Case No. 3350.)

Application of the Newark and Marion Railway Company for consent to the issue of a first mortgage for \$500,000. William Nottingham for the applicant. After hearing arguments the hearing was closed. (Case No. 3348.)

#### *Orders.*

Application of the Auburn and Northern Electric Railroad Company for consent to the issue of a first mortgage for \$1,000,000. Granted, as shown by office original determination on file, on condition that but five hundred thousand dollars (\$500,000) bonds shall be issued under said first mortgage under this consent and on condition that before the remaining five hundred thousand dollars (\$500,000) bonds or any part thereof under said first mortgage shall be issued application shall be made to this Board for consent to the issue of said remaining five hundred thousand dollars (\$500,000) bonds or any part thereof, under said first mortgage. (Case No. 3350.)

Application of the Newark and Marion Railway Company for consent to the issue of a first mortgage for \$500,000. Granted, as shown by office original determination on file, on condition that but two hundred and fifty thousand dollars (\$250,000) bonds shall be issued under said first mortgage under this consent and on condition that before the remaining two hundred and fifty thousand dollars (\$250,000) bonds or any part thereof under said first mortgage shall be issued application shall be made to this Board for consent to the issue of said remaining two hundred and fifty thousand dollars (\$250,000) bonds or any part thereof under said first mortgage. (Case No. 3348.)

The Board adjourned.

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#### ALBANY, MAY 31, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey. The minutes of April 18, 19, 26, 27, 29, May 1, 2, 9, 16, 18, 22, 23 and 24 were read and approved.

#### *Complaints.*

Sutherland R. Haxtun against The Brooklyn Heights Railroad Company as to service rendered the public on its railroad, at the foot of Montague street, Brooklyn, on Saturday afternoon, and as to its service on the Brooklyn bridge from Manhattan at night, after the rush hours. Report dated April 19, 1905, received from the electrical expert as to the service on Montague street on Saturday afternoon. Copy sent complainant. Letter dated May 4, 1905, received from complainant as to the conditions complained of having been improved. Closed. (Case No. 3312.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to operation of locomotive engines attached to trains on the Attica branch of said railroad, reversed. Letter dated May 26, 1905, received from the company stating that it had made arrangements with the Erie Railroad Company as to turning the first named company's engine on the Y at Attica. Copy sent F. C. Stevens, complainant. (Case No. 3305.)

D. H. Angell of Old Chatham against the Rutland Railroad Company as to condition of its fence along his farm. Copy sent company. (Case No. 3351).

West Side Tax Payers' Association of New York city against the New York Central and Hudson River Railroad Company as to its tracks on Eleventh avenue between Thirtieth and Sixtieth streets and operation of freight trains on said tracks. Report dated May 4, 1905, received from the inspector of grade crossings. Ordered filed. (Case No. 3322.)

Board of Trade of the Eastern District of Brooklyn against the Brooklyn Heights Railroad Company as to operation of the Meeker avenue surface line. Answer of company received. Copy sent complainants. Reply of complainants received to the effect that the proposition of the company as to the operation of shuttle cars between Penny Bridge and Graham avenue would be satisfactory. Ordered filed. A report in this matter dated April 20, 1905, was received from the electrical expert. Closed. (Case No. 3330.)

J. M. Hastings, for H. E. Brown, against the Danville and Mt. Morris Railroad as to lack of fences on its railroad along the lands of Mr. Brown near Mt. Morris. Copy sent company. (Case No. 3345.)

Edwin M. Dorland of Old Chatham against the Rutland Railroad Company as to condition of fence of said company along his land. Answer of company received, stating that the fence will be constructed. Copy sent complainant. Closed. (Case No. 2914.)

Homer W. Case against the Poughkeepsie and Eastern Railway Company in relation to farm crossings on his farm, fences, cattle-guards, etc. Copy sent company. (Case No. 3344.)

Edward C. Buchenau of New City, Rockland county, against the Erie Railroad Company as to additional train service on said company's railroad from New City to Nanuet. Copy sent company. Answer of company received stating that it would run a train from New City at 6:20 a. m., arriving in New York at 8:07 a. m. during the summer season. Copy sent complainant. Closed. (Case No. 3342.)

James L. Dunham of Old Chatham against the Rutland Railroad Company as to condition of fence of said company on his farm. Copy sent company. Answer of company received stating that "the matter will be given attention as early as practicable." Copy sent complainant. Closed. (Case No. 3346.)

Matter of instruction to superintendent of grade crossing bureau to report as to condition of the trolley wire of the Kingston Consolidated Railroad Company from the Strand up Broadway to the car barn. (Case No. 3343.)

S. W. Turner against the Interborough Rapid Transit Company (Manhattan Railway division) as to the 116th street and Eighth avenue station of the Manhattan Railway. Report dated May 25, 1905, received from the electrical expert as to a letter dated April 7, 1905, from the company to the Board. Ordered filed. Letter dated May 16, 1905, received from complainant. Ordered filed. Ordered that the electrical expert make another report in this matter. (Case No. 3275.)

William M. MacMahon and J. Wadsworth Norton, president, New Utrecht Avenue Property Owners' Association, against the Brooklyn Heights Railroad Company, as to the running of express trains through New Utrecht avenue, Brooklyn, without stopping, and asking that a stop be made at 58th street. Copy sent company. Answer of company received. Copy sent complainants. Reply of complainant Norton received. A petition in the matter of this complaint was received from the Borough Park and Blythebourne Protective Association. Report dated May 23, 1905, in this matter received from the electrical expert. Ordered copy of report sent company, with a letter of recommendation as shown by office original letter on file; also ordered copy of report sent complainants. (Case No. 3338.)

George W. Jump and Company of Brooklyn against the Central New England Railway Company in relation to charges for car service. Copy sent company. Answer of company received, referring to the New York, Ontario and Western Railway Company. Ordered letter written New York, Ontario and Western Railway Company, as shown by copy on file, enclosing copy of the complaint and copy of answer of the Central New England Railway Company. (Case No. 3336.)

Christopher W. Riley and others of Rensselaer against the United Traction Company and the Cohoes Railway Company as to the operation of cars.



Ordered copies sent companies. Ordered hearing set for Thursday, June 15, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3354.)

Investigation by Board of operation of trains by the Interborough Rapid Transit Company. Closed. (Case No. 3313.)

Theodore S. Rumney, Jr., against the Interborough Rapid Transit Company (Manhattan Railway division) in relation to employees on the Manhattan Railway not wearing badges. Copy sent company. (Case No. 3349.)

J. C. Brackenridge, commissioner of public works, Borough of Brooklyn, New York city, against the Long Island Railroad Company as to the use of the electric third rail for motive power on Atlantic avenue, Brooklyn. Report dated May 25, 1905, received from the electrical expert. Ordered carried on file. (Case No. 3320.)

John Gaul against the Interborough Rapid Transit Company (Manhattan Railway division) as to north-bound trains not stopping at the Forty-seventh street and Fifty-third street stations on the Third avenue line of the Manhattan Railway. Copy sent company. (Case No. 3353.)

Arthur C. Ferguson against the Troy and New England Railway Company. Letter from the company dated May 13, 1905, referring to a letter from the Board to the company dated April 29, 1905, in relation to recommendations of the Board as to the structures and referring to the condition of the company's railway. (Case No. 2886.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to freight rate on shipment of live stock from Carmel and Yorktown on the New York and Putnam division of the New York Central and Hudson River Railroad to New York city. Letter dated May 9, 1905, received from the company. Copy sent complainant (Assemblyman John R. Yale for Charles E. Nichols of Carmel). Ordered carried on file. (Case No. 3273.)

In the matter of complaints against the Brooklyn Heights Railroad Company, a letter dated April 14, 1905, was received from W. B. Gonsalves as to a report of the electrical expert dated April 5, 1905, in the matter of Mr Gonsalves' complaint. Ordered filed. (Case No. 3296.)

In the matter of complaint of the Twenty-eighth Ward Board of Trade of Brooklyn against the Brooklyn Heights Railroad Company, a report dated May 1, 1905, was received from the electrical expert as to the lengthening of the platforms on the Lexington avenue elevated line of said company. Ordered filed. (Case No. 3254.)

#### *Applications.*

Letters and correspondence in the matter of employment of locomotive boiler inspector under chapter 611 of the laws of 1905, were submitted to the Board. Ordered filed.

Application of the Brooklyn Heights Railroad Company in the matter of cash statement shown in Table D on page 10 of the form of report of street surface railroad companies. Ordered letter written company that the cash statement will be eliminated from the form of report for the year ending June 30, 1905. Closed. (Case No. 3334.)

Application of the New York and Jersey Railroad Company for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, June 20, 1905, 2 p. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3355.)

#### *Orders.*

West Side Taxpayers' Association of New York city against the New York Central and Hudson River Railroad Company as to its tracks on Eleventh avenue between Thirtieth and Sixtieth streets and operation of freight trains on said tracks. Recommendations made to the company, as shown by office original determination on file. (Case No. 3322.)

A recess was taken until 7:15 p. m.

AFTER RECESS—7:15 P. M.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

### *Complaints.*

In the matter of complaints against the Union Railway Company as to service rendered the public (Cases Nos. 3236, 3259 and 3154) a letter dated May 26, 1905, was received from the electrical expert to the effect that the New York office had been called up on the telephone by Mr. Maher, president of the company, who stated that Mr. Carrigan, the superintendent of the railway, who was a witness before the Board on the 24th ult., wished to correct his testimony. Ordered that the letter of the electrical expert on this subject and letter dated the 29th ult. from this Board to the president of the company be inserted in the testimony.

### *Applications.*

Application of The Olean Street Railway Company for consent to the issue of a first mortgage for three hundred and fifty thousand dollars (\$350,000) upon a proposed extension of its railroad from Allegany to Salamanca. Ordered hearing set for Tuesday, June 20, 1905, 12 m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery place, New York city. (Case No. 3347.)

Application of the Albany and Susquehanna Railroad Company for consent to the issue of a first mortgage for ten million dollars (\$10,000,000). Ordered hearing set for Tuesday, June 20, 1905, 12 m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3352.)

Application of the Cayuga Lake and Ithaca Railroad Company for a certificate under section 59 of the Railroad Law. Ordered carried on file. (Case No. 3341.)

Application of the Long Island Railroad Company, under section 34 of the Railroad Law, for consent to the discontinuance of its Beach Channel station on its Rockaway Beach division. Report dated April 27, 1905, received from the inspector of grade crossings. Ordered filed. Application granted without a hearing. (Case No. 3307.)

Application of the United Traction Company, under section 103 of the Railroad Law, for approval of a declaration of abandonment of a portion of the route of its railroad between Green Island and Cohoes. Ordered hearing set for Thursday, June 15, 1905, 12 m., at the office of the Board in Albany. (Case No. 3337.)

Application of the Long Island Electric Railway Company (double track, street surface, electric), under section 68 of the Railroad Law, as to crossing three tracks of the Long Island Railroad (steam) in the Jamaica and Hempstead Turnpike highway, east of Queens, Borough of Queens, New York city. Ordered hearing set for Tuesday, June 20, 1905, 3 p. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery Place, New York city. (Case No. 3303.)

### *Reports.*

In the matter of the recommendation of this Board growing out of a report of the inspector dated February 23, 1905, as to a rear collision between freight trains on the Schenectady detour of the New York Central and Hudson River Railroad Company, near Hoffmans, January 1, 1905, a letter dated April 27, 1905, was received from the company as to compliance with the recommendation, which was as to a block signal system. Ordered filed. (Steam Case No. 1—1905.)

Report of the electrical expert dated April 26, 1905, as to a rear collision between cars on the Poughkeepsie City and Wappingers Falls Electric Railway, south of Poughkeepsie, November 3, 1904. Ordered copy sent company. (Street Case No. 46—1904.)

Report of the superintendent of the grade crossing bureau dated May 5, 1905, as to accident on the Lehigh Valley Railroad at Valois, April 3, 1905. Ordered copy sent company. (Steam Case No. 18—1905.)

Report of the electrical expert dated May 22, 1905, as to a head-on collision between cars on the Staten Island Midland Railroad, May 8, 1905. Ordered copy sent company. (Street Case No. 9—1905.)

Report of the electrical expert dated May 25, 1905, as to derailment of train on the Long Island Railroad, May 15, 1905, at Woodhaven Junction. Ordered copy sent company. (Steam Case No. 21—1905.)

Report of the electrical expert dated May 25, 1905, as to compliance by the New Paltz, Highland and Poughkeepsie Traction Company with the recommendations of the Board growing out of an accident which occurred on this company's railroad, October 9, 1904. Ordered copy sent company, with letter as shown by copy on file. (Street Case No. 40—1904.)

In the matter of the report of the electrical expert as to high tension pole line of the Utica and Mohawk Valley Railway in Pleasant street, Frankfort, a letter dated April 24, 1905, was received from Dr. George McCombs, the complainant, as to this high tension pole line, and a letter dated April 27, 1905, was received from the company on the same subject; copy of the company's letter sent complainant. (Case No. 2899.)

In the matter of the construction of a steel guard rail along the Niagara Gorge Railroad to take the place of a wooden guard rail a letter dated April 28, 1905, was received from the company as to the progress of this work. Ordered filed. (Case No. 2279.)

A report was received from the superintendent of the grade crossing bureau dated May 8, 1905, as to galvanized iron trough on trolley wire of the Chautauqua Traction Company (electric) at a temporary crossing at grade of its railroad and the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) in Mayville being extended as recommended by the Board. Ordered filed. (Case No. 3195.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street grade crossing of the New York Central and Hudson River Railroad in the city of Rochester to an undercrossing of said railroad and the closing of the east end of Davis street where it now joins North Union street, proposals of contractors for the superstructure were submitted to the Board by the company, together with a report thereon dated May 1, 1905, from the superintendent of the grade crossing bureau. Ordered approved the proposal for the superstructure of the Riter-Conley Manufacturing Company at its unit price, viz., 2.9 cents per pound. (Grade Crossing Case No. 416.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a revised blue print plan (issue No. 2) of the masonry for bridge 381A at the Green street crossing was submitted to the Board, together with a report thereon dated May 29, 1905, from the superintendent of the grade crossing bureau. The masonry plan for this work was approved March 30, 1905, and the only change shown by the plan submitted to the Board on this date is the addition of a hand railing. Ordered approved said addition of a hand railing to the plan. (Grade Crossing Case No. 369.)

Petition of the town board and commissioner of highways of the town of Freedom, Cattaraugus county, joined in by the Buffalo and Susquehanna Railway Company, for a modification of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, as to the Buffalo and Susquehanna Single track Railway crossing streets, avenues and highways in the county of Cattaraugus, the modification asked for being that the crossing of the Section Line road highway be made at grade instead of over the grade of said highway and that the crossing of the Sandusky Pike highway (No. 3) be made at grade instead of over the grade of said highway. Ordered filed. (Grade Crossing Case No. 481.)

Petition of the town board and the acting commissioner of highways of the town of Concord, Erie county, joined in by the Buffalo and Susquehanna Railway Company, for a modification of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna Single Track Railway crossing the Sibley road highway (sometimes called the Boston and Springville road) in said town, the determination being that said highway should be crossed by said railroad at grade, the modification asked for being that the said highway be diverted to the north and be carried over the said railway on a bridge. Ordered filed. (Grade Crossing Case No. 478.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 13, 1900, as to changing the Chatham street, Niver-ville, town of Kinderhook, Columbia county, grade crossing of the Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) to an undercrossing of said railroad and modified determination contained in a letter dated June 8, 1903, from this Board to Walter Shepard, chief engineer of the Boston and Albany Railroad, an accounting and settlement of legal expenses by the town and company in a suit in the courts brought by Albert T. Smith, as trustee, against the Boston and Albany Railroad and the New York Central and Hudson River Railroad and the town of Kinderhook for consequential damages to abutting real property was submitted to the Board. This suit has been determined by the Court of Appeals against the plaintiff. Ordered that the State's proportion of the cost, viz., two hundred and fifty-two dollars and twenty-six cents (\$252.26), be paid to the town of Kinderhook. See minutes of August 10, 1904, for the main accounting in this case. (Grade Crossing Case No. 160.)

In the matter of undercrossing of the Fitchburg Railroad (Boston and Maine Railroad) at Melrose in the town of Schaghticoke, Rensselaer county, constructed in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated August 24, 1899, a letter dated May 8, 1905, was received from the attorney for the company, accompanied by a profile and copy of a proposition from the town of Schaghticoke to the Boston and Maine Railroad as to the town's doing additional work at this undercrossing at a cost of fifteen hundred dollars (\$1,500). (See minutes of November 2, 1904.) The completed work at this undercrossing was approved by this Board September 13, 1904. Ordered that the company and the town be notified that the Board will not approve of the extra work being done; and that the completed work having been approved, the Board desires that the accounting and settlement be sent in here at an early date. (Grade Crossing Case No. 1.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings of said railroad, a plan was submitted to the Board by The Delaware and Hudson Company for a concrete arch from a point nearly under its track to Nott street. This plan bears the signature of the city engineer of Schenectady. Only a portion of the cost of this arch is to me included in the cost of the work of which the State and city bear a proportion. A report on said plan dated May 12, 1905, was made by the superintendent of the grade crossing bureau. Ordered said plan approved. A previous plan as to this arch had been submitted to the Board but was returned to the company. (Grade Crossing Case No. 390.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 9, 1904, that the Newburgh and Campbell Hall Road highway grade crossing of the New York, Ontario and Western Railway near its Rock Tavern station shall be closed and discontinued, the travel to be diverted by the construction of a new piece of highway to an overhead bridge crossing of said railway to be situated at another point,—specifications for grading, masonry, timber work and steel work for this overcrossing (the general specifications of the New York, Ontario and Western Railway Company) were submitted to the Board by the company, together with a report thereon dated May 22, 1905, from the superintendent of the grade crossing bureau. Ordered said specifications approved. In this case a

canvass sheet of proposals of contractors for the superstructure was submitted to the Board, together with a report thereon dated May 15, 1905, from the superintendent of the grade crossing bureau. Ordered approved the proposal of Milliken Brothers for this superstructure, viz., 2.875 cents per pound. (Grade Crossing Case No. 488.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 8, 1904, as to closing the Van Anden street grade crossing of the New York Central and Hudson River Railroad in the city of Auburn and the construction of two new pieces of street in said city, a letter dated May 26, 1905, was received from the company asking that it be authorized to do the work of constructing the new street B on plan attached to the office original determination in this matter on file in this office at cost plus fifteen per cent. for use of tools and supervision, and a report on said proposition dated May 31, 1905 was received from the superintendent of the grade crossing bureau. Ordered that the company be authorized to construct new street B at cost plus fifteen per cent. for use of tools and supervision. (Grade Crossing Case No. 470.)

Application of the village of Canton, under section 61 of the Railroad Law, for a determination as to whether a new street in said village shall pass over or under the Rome, Watertown and Ogdensburg Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) or at grade. Ordered carried on file. (Grade Crossing Case No. 540.)

Application of The New York, Auburn and Lansing Railroad Company, under section 60 of the Railroad Law, as to its railroad crossing streets, avenues and highways in the county of Cayuga. This company also proposes to construct in Tompkins county but has made no application as to crossings in that county. Ordered carried on file. (Grade Crossing Case No. 541.)

#### *Orders.*

Application of the Long Island Railroad Company, under section 34 of the Railroad Law, for consent to the discontinuance of its Beach Channel station on its Rockaway Beach division. Granted without a hearing. (Case No. 3307.)

The determination of this Board, under section 62 of the Railroad Law, dated May 24, 1900, in the matter of petition of the Ulster and Delaware Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of two grade crossings of its railroad at two places easterly of and half a mile distant from the West Hurley station on said railroad, in the town of Hurley, Ulster county, and alteration in location of highway and the construction of an overhead bridge, was annulled as shown by office original order on file. See minutes of October 20, 1903, and letter from company dated May 15, 1905, in this matter. (Grade Crossing Case No. 150.)

#### *Bill for Printing the Annual Report.*

The bill of the Brandow Printing Company for ten thousand five hundred and eighty-nine dollars and sixty-five cents (\$10,589.65), for printing the annual report, was submitted to the Board by the Comptroller and approved by the Board.

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

John J. Farley (expenses) .....	\$11 50
J. D. Shultz (expenses) .....	112 00
W. M. Davis (expenses) .....	95 00
Karl F. Colson (expenses) .....	40 00
George W. Dunn (expenses) .....	170 00
C. R. Barnes (expenses), April .....	\$110 00
C. R. Barnes (expenses), May .....	80 00
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	190 00

Thomas J. Cowell .....	\$18 80
Banks and Company .....	7 25
Postal Telegraph-Cable Company .....	4 57
American Express Company .....	27 64
National Express Company .....	47 02
"Klips," E. C. Cuyler, Treasurer, April.....	\$25 00
"Klips," E. C. Cuyler, Treasurer, May .....	25 00
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Jno. R. McClellan .....	50 00
Albany District Telegraph Company .....	14 10
Great Bear Spring Company .....	1 05
Western Union Telegraph Company .....	3 00
R. L. Fox .....	2 04
Simpson, Morehead & Company .....	50 00
The Printers' Ink Publishing Company.....	58 00
The Smith Premier Typewriter Company .....	10 00
Hudson River Telephone Company .....	11 50
Brandow Printing Company .....	37 72
	247 40
New York Office:	
George A. Traver .....	
Crystal Spring Water Company .....	4 00
Battery Place Realty Company (May rent).....	2 00
Western Union Telegraph Company, March. \$ 74	150 00
Western Union Telegraph Company, April.. 1 91	
	<hr/>
	2 65
New York Telephone Company, February... \$34 90	
New York Telephone Company, May..... 23 50	
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	58 40
American Ice Company .....	7 90
E. Belcher Hyde .....	10 00
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	\$1,443 54
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*Grade Crossing Expenses.*

James E. Brazee (expenses).....	\$35 90
A. H. Sutermeister (expenses).....	33 45
C. J. Norton (expenses).....	6 50
Frank M. Baker (expenses).....	420 00
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	\$495 85
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The Board adjourned.

ALBANY, JUNE 1, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Adjourned hearing in the matter of the application of the Keeseville, Ausable Chasm and Lake Champlain Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad shall cross the New York and Canada Railroad (leased to and operated by The Delaware and Hudson Company) at Port Kent, above, below or at the grade of said last named railroad. There was no appearance for the applicant; Lewis E. Carr appeared for The Delaware and Hudson Company and the New York and Canada Railroad. Without the hearing of evidence or arguments the hearing was adjourned indefinitely. (Case No. 3315.)

*Reports.*

In the matter of the requirement of the Board, under section 36 of the Railroad Law, to the Wallkill Transit Company as to installing derailing switches in its railroad at the point where its railroad crosses the Erie Railroad in North street, Middletown, a letter dated April 28, 1905, was received from the company, and a report dated May 6, 1905, was received from the inspector of grade crossings. Ordered letter written company on the subject. (Case No. 3340.)

In the matter of the recommendations of the Board as to the physical condition of the Ogdensburg Street Railway, a report dated April 20, 1905, was received from the electrical expert as to non-compliance with the recommendations. Ordered letter written company as shown by copy on file. (Case No. 2795.)

Report of the inspector dated May 10, 1905, of his inspection of the Brooklyn Union Elevated Railroad (operated by the Brooklyn Heights Railroad Company). Ordered copy sent company, with letter of recommendation as shown by office original letter on file. (No. 2—1905.)

Report of the inspector dated May 9, 1905, of his inspection of the Manhattan Railway (operated by the Interborough Rapid Transit Company). Ordered copy sent company, with letter of recommendation as shown by office original letter on file. (No. 1—1905.)

*Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law and Chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a plan for the substructural work in the reconstruction and rearrangement of the overhead crossing of The Delaware and Hudson Company's railroad by the main line of the New York Central and Hudson River Railroad Company's railroad was submitted to the Board by the company, together with a report thereon dated May 31, 1905, by the superintendent of the grade crossing bureau. The plan for this substructural work was approved by this Board December 21, 1904; the plan submitted at this time shows certain slight changes indicated in said report. Ordered approved the plan submitted at this time. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 19, 1904, and modified determination dated September 29, 1904, as to construction of subway for foot passengers under the New York Central and Hudson River Railroad at Herkimer, a report dated May 6, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 498.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing, reports dated April 22 and May 6, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 416.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, as to changing the Broadway crossing of the New York and Putnam division of the New York Central and Hudson River Railroad at Van Cortlandt, New York city, from grade to an undercrossing, a report dated April 22, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 503.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson

Company in Schenectady from grade to undercrossings, reports dated April 22, May 9 and June 1, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, reports dated May 6 and June 1, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 390.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated May 2, 1902, as to changing the Westerlo Turnpike grade crossing of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), in the town of Coeymans, Albany county, to an undercrossing, a letter from the company, dated May 13, 1905, in relation to the State participating in the additional cost of making the drainage system satisfactory, was submitted to the Board. Ordered that the company be notified that the State will bear its proportion of the additional cost of the work due to changing the drainage system. The company's letter also asked the Board in relation to the calculation of interest. Ordered that the company be notified that the interest should be calculated alone to a date not later than thirty days from October 29, 1903, except in the drainage system. (Grade Crossing Case No. 331.)

The Board took a recess until 2 p. m.

#### AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

#### *Hearings.*

Adjourned hearing in the matter of the application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law. Herbert P. Bissell summed up for the applicant; Arthur E. Clark summed up for himself in opposition; M. C. Spratt summed up for the New York Central and Hudson River Railroad Company in opposition. (Case No. 3277.)

The Board adjourned.

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#### KINGSTON, JUNE 7, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker, Dickey and Aldridge.

#### *Hearings.*

Adjourned meeting in the matter of the application of the Delaware and Eastern Railroad Company (steam) for a certificate under section 59 of the Railroad Law. H. D. Hinman and Walter E. Cooke for the applicant; John B. Kerr for the New York, Ontario and Western Railway Company, in opposition; Amos Van Etten for the Ulster and Delaware Railroad Company, in opposition. After hearing evidence and arguments the hearing was adjourned until Wednesday, June 21, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. At this hearing two new tracing cloth maps were marked Applicant's Exhibits No. 1 and No. 2,—No. 1 being map and profile of the main line of the road, and No. 2 being map and profile of the Andes branch. These maps were not left with the Board but were taken by the engineer of the applicant company. (Case No. 3302.)

The Board adjourned.



ELMIRA, JUNE 13, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker, Dickey and Aldridge.

*Hearings.*

Adjourned hearing in the matter of the application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law. Boyd McDowell and Theodore R. Tuthill for the applicant; Frank A. Bell for John Wilson and others, in opposition to the route proposed by the company; Thomas O'Connor and George McCann for The Elmira and Waverly Railway Company, in opposition; A. C. Wade for the Waverly, Sayre and Athens Traction Company, in opposition. After hearing evidence and arguments a recess was taken until 2 p. m. (Case No. 3323.)

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Baker, Dickey and Aldridge.

*Hearings.*

The hearing in the application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further, the hearing was adjourned until Monday, July 10, 1905, at 10 o'clock a. m., at the village hall, Waverly. (Case No. 3323.)

*Bill Approved.*

The following bill was approved:

Wm. McNeilly (stamps) ..... \$100 00

The Board adjourned.

8 P. M.

*Hearings.*

Hearing before Commissioner Dickey (by delegation of the Board) on the *bona fides* of the enterprise and financial ability of the projectors to build the road, in the application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law. (Case No. 3323.)

The new application of The Elmira and Waverly Railway Company for a certificate under section 59 of the Railroad Law was to have been heard to-day (see minutes of May 16, 1905), but was not heard, because the applicant has not yet filed a new application accompanied with proof of publication of its articles of association.

ALBANY, JUNE 15, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

George W. Aldridge tendered his resignation, dated the 6th inst., as Secretary, he having been appointed a member of the Board.

*Hearings.*

Application of the New York and Ottawa Railway Company for consent to the issue of a first mortgage for two million five hundred thousand dollars (\$2,500,000). Ira A. Place for the applicant. After hearing arguments the hearing was closed. (Case No. 3358.)

Christopher W. Riley and others of Renesselaer against the United Traction Company and the Cohoes Railway Company as to operation of cars. Joseph P. Coughlin and Thomas T. McDermott for complainants; P. C. Dugan for

the United Traction Company; John E. McLean for the Cohoes Railway Company; Albert Hessberg, counsel, for both of said companies. Counsel for complainants stated that they did not wish to proceed owing to pending matters of agreement between representatives of the city of Rensselaer and the companies; counsel for the companies also addressed the Board on the subject. The hearing was adjourned without date pending the result of such matters of agreement. (Case No. 3354.)

Application of the United Traction Company, under section 103 of the Railroad Law, for approval of a declaration of abandonment of a portion of the route of its railroad in Green Island and Cohoes. P. C. Dugan for the applicant; Frank H. Deal for the village of Green Island, in opposition; Edwin J. Sweeney for the city of Troy, in opposition; Henry A. Strong, corporation counsel, for the city of Cohoes, in opposition; G. B. Wellington for the town of Green Island, in opposition; James L. Scott for the Security Steel and Iron Company and the Sweet & Doyle Valve Company of Green Island, in opposition; LeGrand B. Tibbitts, as agent, and E. W. Douglas, as attorney, for the Tibbitts estate in opposition; Samuel E. Hutton for the Chamber of Commerce, Troy, in opposition; Herman Kahl for the Business Men's Association of the city of Cohoes, in opposition. After hearing evidence and arguments the application was denied, without a written order. (Case No. 3337.)

#### *Complaints.*

William M. MacMahon, and J. Wadsworth Norton, president New Utrecht Avenue Property Owners' Association, against The Brooklyn Heights Railroad Company as to the running of express trains through New Utrecht avenue, Brooklyn, without stopping, and asking that a stop be made at Fifty-eighth street. Letter dated June 8, 1905, received from the company stating that it had complied with the recommendations of the Board. Ordered filed. Letter dated June 8, 1905, received from William M. MacMahon; letter dated June 11, 1905, received from J. Wadsworth Norton; letter dated June 12, 1905, received from the Borough Park and Blythebourne Protective Association. Ordered filed. Ordered hearing in this matter set for Wednesday, June 21, 1905, 11:30 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3338.)

#### *Applications.*

Application of the Erie and Jersey Railroad Company for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, June 20, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3359.)

Application of the Erie and Jersey Railroad Company for consent to the issuance of a first mortgage for ten million dollars (\$10,000,000). Ordered hearing set for Tuesday, June 20, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3360.)

Application of the Cortland County Traction Company for consent to the issuance of a first mortgage for five hundred thousand dollars (\$500,000). Ordered hearing set for Wednesday, June 21, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3361.)

Letters and correspondence in the matter of employment of locomotive boiler inspector, under chapter 611 of the Laws of 1905, were submitted to the Board. Ordered filed.

Letters and correspondence in the matter of appointment of a secretary of the Board were submitted to the Board. Ordered filed.

#### *Crossings.*

Petition of the president and trustees of the village of Homer, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hooker avenue grade crossing of the Syracuse, Binghamton and New York

Railroad and the diversion of the travel to an overhead crossing of said railroad, proposed to be constructed about 100 feet south of said existing grade crossing, by the construction of new pieces of highway and approaches to said proposed overcrossing. Ordered hearing set for Wednesday, June 28, 1905, 10 a. m., at the Osborne House, Auburn. (Grade Crossing Case No. 543.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 25, 1904, as to changing the Chautauqua road or Valley street (or Lake road) grade crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company), in Mayville, to an overcrossing, proposals of contractors for the complete substructural and superstructural work were submitted to the Board, together with a report thereon, dated June 14, 1905, from the superintendent of the grade crossing bureau. Ordered approved the proposal of the Kellogg Iron Works, viz., twenty-seven thousand two hundred and eighty dollars (\$27,280), for the complete substructural and superstructural work. (Grade Crossing Case No. 491.)

#### *Orders.*

Application of the New York and Ottawa Railway Company for the consent to the issuance of a first mortgage for two million five hundred thousand dollars (\$2,500,000). Granted. (Case No. 3358.)

Application of the Albion and Lockport Railway for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3323.)

Application of the Albion and Rochester Railway for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3324.)

Application of the Buffalo, Batavia and Rochester Electric Railway Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3238.)

Application of the Buffalo and Rochester Railway Company for a certificate under section 59 of the Railroad Law. Denied. (Case No. 3277.)

Application of the United Traction Company, under section 103 of the Railroad Law, for approval of a declaration of abandonment of a portion of the route of its railroad in Green Island and Cohoes. Denied without a written order.

The Board adjourned.

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NEW YORK, JUNE 20, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Dickey and Aldridge.

#### *Applications.*

Application of The Staten Island Rapid Transit Railway Company for consent to the issue of a first mortgage for \$10,000,000. Ordered hearing set for Wednesday, June 28, 1905, 9:30 a. m., at the Osborn House, Auburn. (Case No. 3366.)

#### *Hearings.*

Application of the Erie and Jersey Railroad Company (steam) for a certificate under section 59 of the Railroad Law. G. F. Brownell and George N. Orcutt for the applicant; T. L. Hodge for the Lehigh and Hudson River Railroad Company, as to a proposed crossing of said company's railroad. After hearing evidence and arguments the hearing was adjourned until Wednesday, June 28, 1905, 9:30 a. m., at the Osborn House, Auburn. (Case No. 3359.)

Application of the Erie and Jersey Railroad Company for consent to the issue of a first mortgage for \$10,000,000. G. F. Brownell for the applicant. After hearing arguments the hearing was adjourned until Wednesday, June 28, 1905, 9:30 a. m., at the Osborn House, Auburn. (Case No. 3360.)

Adjourned hearing in the matter of the application of the Bronx, Yonkers and White Plains Railway Company (street surface) for a certificate under

section 59 of the Railroad Law. A. S. Gilbert for the applicant; Francis A. Winslow for the city of Yonkers; H. C. Ruston, Clarence W. Clark, Isaac M. Hunt, B. Garthwait, James S. Hammond, A. P. W. Kinnan for J. Romaine Brown & Company, F. S. Fisher; A. J. Hart, Alfred E. Smith for the Yonkers and White Plains Railway Company, in opposition; C. C. Paulding for the New York Central and Hudson River Railroad Company, in opposition. After hearing evidence and arguments the hearing was adjourned until Tuesday, August 15, 1905, 10 a. m., at the New York office of the Board, Room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3319.)

Application of the Albany and Susquehanna Railroad Company for consent to the issue of a first mortgage for \$10,000,000. William S. Opdyke for the applicant. After hearing arguments the hearing was closed. (Case No. 3352.)

Application of The Olean Street Railway Company for consent to the issuance of a first mortgage for \$350,000 on its proposed extension from Allegany to Salamanca. William L. Marcy for the applicant. After hearing arguments the hearing was closed. (Case No. 3347.)

The Board took a recess until 2 p. m.

#### AFTER RECESS—2 P. M.

The Board again met. All the Commissioners present.

#### Hearings.

Application of the New York and Jersey Railroad Company for a certificate under section 59 of the Railroad Law. Stetson, Jennings & Russell (Mr. Jennings and Mr. Green appearing) for the applicant. No one else appeared. After hearing evidence and arguments the hearing was closed. Evidence was heard in executive session as to the *bona fides* of the enterprise and financial ability of the projectors to build the railroad. (Case No. 3355.)

Application of the Long Island Electric Railway Company for a determination as to whether its railroad (double track electric) shall cross three tracks of the steam railroad of the Long Island Railroad Company at a point where the Long Island Railroad crosses at grade the Jamaica and Hempstead Turnpike highway east of Queens, Borough of Queens, New York city, above, below or at the grade of said steam railroad. William E. Stewart for the applicant; J. F. Keany for the Long Island Railroad Company. After hearing arguments the hearing was closed. (Case No. 3303.)

#### Orders.

Application of the New York and Jersey Railroad Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3355.)

Application of the Long Island Electric Railway Company for a determination as to whether its railroad (double track electric) shall cross three tracks of the steam railroad of the Long Island Railroad Company at a point where the Long Island Railroad crosses at grade the Jamaica and Hempstead Turnpike highway east of Queens, Borough of Queens, New York city, above, below or at the grade of said steam railroad. Determination as shown by office original determination on file that the crossing (single track) may be made at grade temporarily, protected as stated and the expense to be borne as stated in the determination. (Case No. 3303.)

The Board adjourned.

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NEW YORK, JUNE 21, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Application of the Delaware and Eastern Railroad Company (steam) for a certificate under section 59 of the Railroad Law. H. D. Hinman and Walter E. Cooke for the applicant; John B. Kerr for the New York, Ontario and Western Railway Company, in opposition; Amos Van Etten for the Ulster and Delaware Railroad Company, in opposition. After hearing evidence and arguments the hearing was adjourned until Thursday, July 6, 1905, 10 a. m., at the office of the Board in Albany. The applicant closed its case except in rebuttal. Evidence was heard in executive session as to the *bona fides* of the enterprise and financial ability of the projectors to build the railroad. (The applicant still has maps referred to on the minutes of the Board in the various hearings.) (Case No. 3302.)

William M. McMahon, and J. Wadsworth Norton, president New Utrecht Avenue Property Owners' Association against The Brooklyn Heights Railroad Company as to the running of express trains through New Utrecht avenue, Brooklyn, without stopping, and asking that a stop be made at Fifty-eighth street. Lewis J. Doolittle for complainants; Dow S. Smith for The Brooklyn Heights Railroad Company. After hearing evidence and arguments the hearing was closed. (Case No. 3338.)

Application of The Cortland County Traction Company for consent to the issuance of a first mortgage for \$500,000. Edwin Duffey for the applicant. After hearing arguments the hearing was adjourned until Wednesday, June 28, 1905, 10 a. m., at the Osborn House, Auburn. (Case No. 3361.)

*Applications.*

Application of the Lehigh and Lake Erie Railroad Company for consent to the issuance of a first mortgage for \$3,000,000. Ordered hearing set for Wednesday, June 28, 1905, 10 a. m., at the Osborn House, Auburn. (Case No. 3370.)

Application of the Buffalo, Batavia and Rochester Electric Railway Company for consent to the issuance of a first mortgage for \$3,500,000. Ordered hearing set for Wednesday, June 28, 1905, 10 a. m., at the Osborn House, Auburn. (Case No. 3368.)

An opinion, dated June 19, 1905, was received from the Attorney-General as to appointment by the Board of inspector of locomotive engine boilers. Ordered filed.

*Orders.*

In the matter of complaints of the Van Nest Property Owners' Association (Case No. 3236) against the Union Railway Company; Property Owners' Association of the Twenty-third Ward, Borough of the Bronx, New York city; Woodlawn Taxpayers' Association; McLean Heights Taxpayers' Association and Throggs Neck Taxpayers' Association (Case No. 3259) in the matter of service rendered the public in the Borough of the Bronx by the Union Railway Company and the Interborough Rapid Transit Company (Manhattan Railway division); investigation by the Board of traffic conditions on the Union Railway of New York city (Case No. 3154), recommendations to the Union Railway Company were adopted and ordered issued. The Board determined that there seemed to be no action necessary on the complaints so far as they relate to the Interborough Rapid Transit Company (Manhattan Railway division).

*Bill Approved.*

The following bill was approved:

*General Expenses.*

Joseph M. Dickey (expenses).....	\$246 25
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The Board adjourned.

AUBURN, JUNE 28, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

### *Hearings.*

Adjourned hearing in the matter of the application of the Erie and Jersey Railroad Company (steam) for a certificate under section 59 of the Railroad Law. G. F. Brownell for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3359.)

Adjourned hearing in the matter of the application of the Erie and Jersey Railroad Company for consent to the issuance of a first mortgage for ten million dollars (\$10,000,000). G. F. Brownell for the applicant. After hearing arguments the hearing was closed. (Case No. 3360.)

Application of The Staten Island Rapid Transit Railway Company for consent to the issuance of a first mortgage for ten million dollars (\$10,000,000). Lester W. Clark and George H. Campbell (who was sworn) for the applicant. After hearing arguments the hearing was closed. (Case No. 3366.)

Adjourned hearing in the matter of the application of The Cortland County Traction Company for consent to the issuance of a first mortgage for five hundred thousand dollars (\$500,000). Dickinson & Duffey for the applicant. After hearing arguments the hearing was closed. (Case No. 3361.)

Application of the Buffalo, Batavia and Rochester Electric Railway Company for consent to the issuance of a first mortgage for three million five hundred thousand dollars (\$3,500,000). George L. Lewis for the applicant. After hearing arguments and the filing by Mr. Lewis of a supplemental petition in this matter as to the discharge of a first mortgage for three million five hundred thousand dollars (\$3,500,000) of the Buffalo and Williamsville Electric Railway Company (which mortgage was consented to by this Board on May 24, 1904) and the cancellation of one hundred and seventeen thousand five hundred dollars (\$117,500) bonds issued under said Buffalo and Williamsville Electric Railway Company first mortgage, the hearing was closed. (Case No. 3368.)

Application of the Lehigh and Lake Erie Railroad Company for consent to the issuance of a first mortgage for three million dollars (\$3,000,000). Walter P. Cook for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3370.)

Application of the Buffalo, Lockport and Rochester Railway Company for consent to the issuance of a first mortgage for four million dollars (\$4,000,000). A. B. Boardman for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3374.)

Application of the Buffalo, Lockport and Rochester Railway Company for approval of an increase of its capital stock from five hundred and ninety thousand dollars (\$590,000) to four million dollars (\$4,000,000). A. B. Boardman for the applicant. After hearing evidence and arguments the hearing was closed. (Case No. 3373.)

Application of The Waverly, Sayre and Athens Traction Company for consent to the issuance of a first mortgage for five million dollars (\$5,000,000). C. A. Collins and A. C. Wade for the applicant. After hearing arguments the hearing was closed. (Case No. 3375.)

Adjourned hearing in the matter of the application of The Olean Street Railway Company for consent to the issuance of a first mortgage for three hundred and fifty thousand dollars (\$350,000) on its proposed extension from Allegany to Salamanca. This hearing was closed in New York on the 20th inst., but W. L. Marcy, attorney for the company, asking opportunity to further appear in the matter, he was allowed to so appear on this date. After hearing arguments the hearing was closed. (Case No. 3347.)

Petition of the president and trustees of the village of Homer, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hooker avenue grade crossing of the Syracuse, Binghamton and New York Railroad and the diversion of the travel to an overhead crossing of said railroad proposed to be constructed about one hundred feet south of said

existing grade crossing by the construction of new pieces of highway and approaches to said proposed overcrossing. Dickinson & Duffey for the petitioners and for the Syracuse, Binghamton and New York Railroad Company; F. R. Thomas, president, and William Foster and John Latimer, trustees, also for the village of Homer. After hearing arguments the matter was held open for the production before this Board on July 6 in Albany of a new plan for the proposed overcrossing. Mr. Duffey was informed that the engineer who made the plan produced before the Board at this hearing should confer with the superintendent of the grade crossing bureau in this department as to a new plan for this overcrossing. (Grade Crossing Case No. 543.)

Application of The New York, Auburn and Lansing Railroad Company, under section 60 of the Railroad Law, as to its railroad crossing streets, avenues and highways in the county of Cayuga. This company also proposes to construct in the county of Tompkins, but as yet has made no formal application as to crossings in that county. E. C. Aiken for the applicant; Frank S. Coburn for the town of Aurelius as to proposed crossing of Genesee street by the applicant's railroad, contending that the railroad should cross Genesee street overhead. After hearing evidence and arguments the hearing was adjourned until Thursday, July 6, 1905, 2:30 p. m., at the office of the Board in Albany. (Grade Crossing Case No. 541.)

Petition of the town board and commissioner of highways of the town of Freedom, Cattaraugus county, joined in by the Buffalo and Susquehanna Railway Company (single track), for a modification of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, as to the Buffalo and Susquehanna Railway crossing streets, avenues and highways in the county of Cattaraugus, the modification asked for being that the crossing of the Section Line Road highway be made at grade instead of over the grade of said railway and that the crossing of the Sandusky Pike highway (No. 3) be made at grade instead of over the grade of said highway. Walter P. Cooke (attorney, Buffalo and Susquehanna Railway Company) for the petitioners. No one else appeared. After hearing arguments the hearing was closed. (Grade Crossing Case No. 481.)

Petition of the town board and the acting commissioner of highways of the town of Concord, Erie county, joined in by the Buffalo and Susquehanna Railway Company (single track), for a modification of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna Railway crossing the Sibley Road highway (sometimes called the Boston and Springville Road highway) in said town, the determination being that said highway should be crossed by said railway at grade, the modification asked for being that the said highway be diverted to the north and be carried over the said railway on a bridge. Walter P. Cooke (attorney, Buffalo and Susquehanna Railway Company) for the petitioners. No one else appeared. After hearing arguments the hearing was closed. (Grade Crossing Case No. 478.)

Petition of the Buffalo and Susquehanna Railway Company (single track), joined in by the town board and the highway commissioner of the town of Hamburg, Erie county, for a modification of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna Railway crossing Clark street in the town of Hamburg, Erie county, the determination being that the said highway should be crossed by said railway above the grade of said highway, the modification asked for being that the said railway shall cross said highway below the grade of the highway. This application for modification takes the place of an application for modification, so that Clark street should be crossed by the railway at grade, in which there was a hearing before this Board December 21, 1904. Walter P. Cooke (attorney, Buffalo and Susquehanna Railway Company) for the petitioners: Perry M. Thorne, attorney, and John Schoepflin, supervisor, appeared for the town in favor of the petition for modification; G. T. Rogers appeared for the Buffalo and Southern Railway Company, whose railway is to be crossed at this crossing. After hearing arguments the hearing was closed. (Grade Crossing Case No. 478.)

Petition of the town board and the commissioner of highways of the town of Amity, Allegany county, joined in by the Buffalo and Susquehanna Railway Company (single track), for a modification of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, as to the Buffalo and Susquehanna Railway crossing the Plank Road highway in said town, the determination being that said highway should be crossed by said railway at grade, the modification asked for being that the said railway be carried over the said highway above grade, the petition for modification also asking that a temporary overcrossing to carry the railway may be constructed pending the construction of the permanent overcrossing to carry the railway. Walter P. Cooke (attorney, Buffalo and Susquehanna Railway Company) for the petitioners. No one else appeared. After hearing arguments the hearing was closed. (Grade Crossing Case No. 479.)

Petition of the Buffalo and Susquehanna Railway Company (single track), under section 60 of the Railroad Law, as to its railway crossing the Yorkshire Road highway in the town of Yorkshire, Cattaraugus county, the company not proposing to cross the Yorkshire Road highway in the town of Sardinia, Erie county, at which point this Board determined, under date of August 10, 1904, it should cross at grade. The local authorities of the town of Sardinia, Erie county, were also notified of this hearing. Walter P. Cooke appeared for the petitioner. No one else appeared. After hearing arguments the hearing was closed. (Grade Crossing Case No. 538.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the single track railway of the Buffalo and Susquehanna Railway Company crossing streets, avenues and highways in the county of Erie, in which determination this Board stated that it reserved seven of the proposed crossings for future determination, Walter P. Cooke, attorney for the company, appeared before the Board and asked for a determination as to six of these crossings (the Ridge Road, in the town of West Seneca, he not asking to be determined at this time because the Pennsylvania Railroad Company, which is interested, is to receive notice before he asks for a determination as to this crossing). (Grade Crossing Case No. 478.)

#### *Orders.*

Petition of the town board and commissioner of highways of the town of Freedom, Cattaraugus county, joined in by the Buffalo and Susquehanna Railway Company (single track), for a modification of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, as to the Buffalo and Susquehanna Railway crossing streets, avenues and highways in the county of Cattaraugus, the modification asked for being that the crossing of the Section Line Road highway be made at grade instead of over the grade of said railway and that the crossing of the Sandusky Pike highway (No. 1) be made at grade instead of over the grade of said highway. Ordered that said determination be modified, as shown by office original modified determination on file, so that the said crossing of said highways by said railway may be made at grade instead of over the grade of said highways and new pieces of highways be constructed. (Grade Crossing Case No. 481.)

Petition of the town board and the acting commissioner of highways of the town of Concord, Erie county, joined in by the Buffalo and Susquehanna Railway Company (single track), for a modification of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna Railway crossing the Sibley Road highway (sometimes called the Boston and Springville Road highway) in said town, the determination being that said highway should be crossed by said railway at grade, the modification asked for being that the said highway be diverted to the north and be carried over the said railway on a bridge. Ordered that said determination be modified, as shown by office original modified determination on file, so that the said highway shall be diverted to the north and be carried over the said railway on a bridge instead of at



grade, the grade of the approaches to the bridge not to exceed six per cent. (Grade Crossing Case No. 478.)

Petition of the Buffalo and Susquehanna Railway Company (single track), joined in by the town board and the highway commissioner of the town of Hamburg, Erie county, for a modification of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna Railway crossing Clark street in the town of Hamburg, Erie county, the determination being that the said highway should be crossed by said railway above the grade of said highway, the modification asked for being that the said railway shall cross said highway below the grade of the highway. This application for modification takes the place of an application for modification so that Clark street should be crossed by the railway at grade, in which there was a hearing before this Board December 21, 1904. Ordered that said determination be modified, as shown by office original modified determination on file, so that said railway shall cross said highway below the grade of the highway, the bridge carrying the highway to be as shown by office original determination on file. (Grade Crossing Case No. 478.)

Petition of the town board and the commissioner of highways of the town of Amity, Allegany county, joined in by the Buffalo and Susquehanna Railway Company (single track), for a modification of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, as to the Buffalo and Susquehanna Railway crossing the Plank Road highway in said town, the determination being that said highway should be crossed by said railway at grade, the modification asked for being that the said railway be carried over the said highway above grade, the petition for modification also asking that a temporary overcrossing to carry the railway may be constructed pending the construction of the permanent overcrossing to carry the railway. Ordered that said determination be modified, as shown by office original modified determination on file, so that the said railway shall cross said highway above the grade of said highway, the undercrossing for the highway to have a width of twenty feet in the clear and there to be a clearance from the lowest part of the bridge to the highway of twelve feet, and that a temporary overcrossing to carry the railway may be constructed pending the construction of the permanent overcrossing to carry the railway, the temporary overcrossing to be maintained for a period not exceeding six months from March 22, 1905. (Grade Crossing Case No. 479.)

Petition of the Buffalo and Susquehanna Railway Company (single track), under section 60 of the Railroad Law, as to its railway crossing the Yorkshire Road highway in the town of Yorkshire, Cattaraugus county, the company not proposing to cross the Yorkshire Road highway in the town of Sardinia, Erie county, at which point this Board determined under date of August 10, 1904, it should cross at grade. Determination, as shown by office original determination on file, that the said railway shall cross the Yorkshire Road highway in the town of Yorkshire, Cattaraugus county, at grade, and that an electric bell be maintained at the crossing near the highway on each side of the railway; and ordered that so much of the determination of August 10, 1904, as relates to the railway crossing the Yorkshire Road highway in the town of Sardinia, Erie county, be annulled in this determination. (Grade Crossing Case No. 538.)

In the matter of the application of the Buffalo and Susquehanna Railway Company, under section 60 of the Railroad Law, for a determination as to how its single track railway shall cross streets, avenues and highways in the county of Erie, in which this Board made a determination dated August 10, 1904, in which determination seven crossings were reserved for future determination. Ordered that all of these seven crossings named in said determination, except the Ridge Road in the town of West Seneca, be crossed by said railway in the manner set forth by the office original determination on file, which is a supplemental determination. (Grade Crossing Case No. 478.)

Application of the Erie and Jersey Railroad Company (steam) for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3359.)

The Board took a recess until 2:30 p. m.

AFTER RECESS—2:30 P. M.

The Board again met. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Application of The Electric City Railway Company for consent to the issuance of a first mortgage for five hundred thousand dollars (\$500,000). P. F. King for the applicant. After hearing arguments the hearing was closed. (Case No. 3378.)

*Orders.*

Application of the Erie and Jersey Railroad Company for consent to the issuance of a first mortgage for ten million dollars (\$10,000,000). Granted. (Case No. 3360.)

Application of The Staten Island Rapid Transit Railway Company for consent to the issuance of a first mortgage for ten million dollars (\$10,000,000). Consent to the issuance of a first mortgage for five million dollars (\$5,000,000) was granted. (Case No. 3366.)

Application of The Cortland County Traction Company for consent to the issuance of a first mortgage for five hundred thousand dollars (\$500,000). Granted. (Case No. 3361.)

Application of the Buffalo, Batavia and Rochester Electric Railway Company for consent to the issuance of a first mortgage for three million five hundred thousand dollars (\$3,500,000). Granted, on condition that a first mortgage of the Buffalo and Williamsville Electric Railway Company for three million five hundred thousand dollars (\$3,500,000), consented to by this Board on May 24, 1904, shall be discharged and on condition that one hundred and seventeen thousand five hundred dollars (\$117,500) bonds issued under said Buffalo and Williamsville Electric Railway Company first mortgage shall be cancelled. (Case No. 3368.)

Application of the Lehigh and Lake Erie Railroad Company for consent to the issuance of a first mortgage for three million dollars (\$3,000,000). Granted. (Case No. 3370.)

Application of the Buffalo, Lockport and Rochester Railway Company for consent to the issuance of a first mortgage for four million dollars (\$4,000,000). Granted. (Case No. 3374.)

Application of the Buffalo, Lockport and Rochester Railway Company for approval of an increase of its capital stock from five hundred and ninety thousand dollars (\$590,000) to four million dollars (\$4,000,000). Granted. (Case No. 3373.)

Application of The Waverly, Sayre and Athens Traction Company for consent to the issuance of a first mortgage for five million dollars (\$5,000,000). Consent to the issuance of a first mortgage for two million dollars (\$2,000,000) was granted. (Case No. 3375.)

Application of The Olean Street Railway Company for consent to the issuance of a first mortgage for three hundred and fifty thousand dollars (\$350,000) on its proposed extension from Allegany to Salamanca. Granted. (Case No. 3347.)

Application of The Electric City Railway Company for consent to the issuance of a first mortgage for five hundred thousand dollars (\$500,000). Granted. (Case No. 3376.)

The Board adjourned.

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ALBANY, JULY 6, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Adjourned hearing in the matter of the application of the Delaware and Eastern Railroad Company for a certificate under section 59 of the Railroad

Law. H. D. Hinman for the applicant; John B. Kerr for the New York, Ontario and Western Railway Company, in opposition; Amos Van Eppen for the Ulster and Delaware Railroad Company, in opposition. After hearing evidence and arguments the hearing was closed. Briefs are to be exchanged between counsel for the applicant and counsel in opposition within seven days from this date and to be filed with this Board within ten days from this date. The applicant's attorney returned to the Board exhibits Nos. 1 and 2, which are maps and profiles of the proposed route. (Case No. 3302.)

Adjourned hearing in the matter of the petition of the president and trustees of the village of Homer, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hooker avenue grade crossing of the Syracuse, Binghamton and New York Railroad and the diversion of the travel to an overhead crossing of said railroad proposed to be constructed about 100 feet south of said existing grade crossing by the construction of new pieces of highway and approaches to said proposed overcrossing. Dickinson & Duffey (Mr. Duffey appearing) for the petitioners and for the Syracuse, Binghamton and New York Railroad Company. There were filed with the Board on this date new plans for this overcrossing, as to which the superintendent of the grade crossing bureau made verbal report. After hearing arguments the evidence was closed, but the matter was held open. Mr. Duffey is to file with the Board the written approval of the president of the village of Homer of the plans submitted to-day. (Grade Crossing Case No. 543.)

#### *Applications.*

In the matter of the determination of this Board, dated July 19, 1904, in the application of the Hudson Valley Railway Company (street surface electric), under section 68 of the Railroad Law, as to crossing the steam railroad operated by The Delaware and Hudson Company in Broadway in the village of Fort Edward, in which determination the time limit for the temporary continuance of the crossing in question, which is a grade crossing, was extended until July 1, 1905,—an application dated June 30, 1905, was received from the Hudson Valley Railway Company asking that the Board modify its determination of July 19, 1904, so that this temporary grade crossing may be continued indefinitely. W. L. Kiley, attorney for applicant, appeared. Ordered hearing set on this application for Monday, August 14, 1905, 2 p. m., at the office of the Board in Albany. Also ordered that the said temporary grade crossing may exist during the months of July and August, 1905, pending the hearing on this application which is to be held on August 14, and determination. (Case No. 2685.)

#### *Orders.*

In the matter of the application of the Hudson Valley Railway Company (street surface electric) dated June 30, 1905, under section 68 of the Railroad Law, as to an existing temporary grade crossing of its railway and the railroad operated by The Delaware and Hudson Company in Broadway in the village of Fort Edward,—it was determined, as shown by office original determination on file, that the said temporary grade crossing may exist during the months of July and August, 1905, pending the hearing on this application which is to be held on August 14, and determination. (Case No. 2685.)

The Board took a recess until 2:30 p. m.

AFTER RECESS—2:30 P. M.

The Board again met. All the Commissioners present.

#### *Hearings.*

Adjourned hearing in the matter of the application of The New York, Auburn and Lansing Railroad Company, under section 60 of the Railroad Law, as to its railroad crossing streets, avenues and highways in the county

of Cayuga. E. C. Aiken and Herbert A. Clark for the applicant. No one else appeared. After hearing arguments the hearing was closed. (Grade Crossing Case No. 541.)

#### *Orders.*

Application of The New York, Auburn and Lansing Railroad Company, under section 60 of the Railroad Law, as to its railroad crossing streets, avenues and highways in the county of Cayuga. Determination as shown by office original determination on file. (Grade Crossing Case No. 541.)

#### *Applications.*

In the matter of the application of The New York, Auburn and Lansing Railroad Company, under section 68 of the Railroad Law, as to whether its railroad shall cross the Cayuga division of the Lehigh Valley Railroad at Auburn above, below or at the grade of the Lehigh Valley Railroad (it being proposed that the crossing be above grade), a report, dated May 20, 1905, was received from the superintendent of the grade crossing bureau as to the proposed overhead structure. Referred to Commissioner Baker. (Case No. 3292.)

Application of The Glen Cove Railroad Company for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, August 29, 1905, 10 a. m., at the New York office of the Board, Room 406, Whitehall Building, 17 Battery place, New York city. (Case No. 3378.)

Application of the Buffalo and Susquehanna Railroad Company, under section 33 of the Railroad Law, as to highway crossing signs. Determination approving sign, etc., as shown by office original determination on file. (Case No. 3363.)

Application of the New York Central and Hudson River Railroad Company, under section 34 of the Railroad Law, for consent to the discontinuance of its Cranes Village station, in the county of Montgomery. Ordered hearing set for Monday, August 14, 1905, 11:30 a. m., at the office of the Board in Albany. (Case No. 3357.)

Application of the Rutland Railroad Company, under section 34 of the Railroad Law, for consent to the discontinuance of the station of said company at West Lebanon, a new station to be established and maintained at a point known as Adams crossing. Ordered hearing set for Monday, August 14, 1905, 11:30 a. m., at the office of the Board in Albany. (Case No. 3367.)

Application of The Electric City Railway Company, under section 68 of the Railroad Law, as to its railway crossing on Niagara street, Niagara Falls, the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company,—the applicant company asking that its railway may be permitted temporarily to make this crossing at grade. Ordered hearing set for Friday, August 4, 1905, 10 a. m., in Niagara Falls. (Case No. 3380.)

In the matter of the determination of this Board, dated November 2, 1904, in the application of the Erie Railroad Company (steam), under section 36 of the Railroad Law, for approval of an interlocking switch and signal apparatus to be installed at a grade crossing of the Erie Railroad and the Delaware, Lackawanna and Western Railroad (steam) east of the station in Binghamton,—a plan showing some changes of this plant was submitted to the Board in a letter from the Erie Railroad Company, dated June 29, 1905, together with a report thereon, dated July 5, 1905, from the superintendent of the grade crossing bureau. Ordered said changed plan approved, said changed plan to take the place of the plan attached to the office original determination of November 2, 1904, in this matter. (Case No. 3237.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated June 20, 1905, as to the railroad of the Long Island Electric Railway Company (street surface electric) crossing the Long Island Railroad (steam) at a point where the Long Island Railroad crosses at grade the Jamaica and Hempstead Turnpike highway, east of Queens, borough of Queens, New York city,—a plan of the V-shaped brass trough to be constructed over the trolley wire of the electric railroad was submitted to the

Board by the Long Island Electric Railway Company, together with a report thereon, dated July 5, 1905, by the superintendent of the grade crossing bureau. Ordered said plan for V-shaped brass trough approved, on condition that the trough extend on each side of the crossing about 50 feet from the nearest rail of the steam railroad. Case No. 3873.

A request was received from the New York Central and Hudson River Railroad Company for the Board to investigate the form of third rail construction proposed to be used on said railroad. Ordered that the electrical expert make a report in this matter. Case No. 3879.

There was filed with the Board a petition of The Waverly, Sayre and Athens Traction Company asking the Board to certify that public convenience and necessity require the construction of an extension of its railroad from Waverly to and into Elmira. The petition states that said extension "will not parallel any existing street surface railroad outside the limits of a city or village." The petition was accompanied by a map and profile of the proposed extended route. Ordered said petition, map and profile returned to the company with a letter stating that this Board has no jurisdiction in the matter.

A circular and proposed form of certificate as to inspection of locomotive boilers, under chapter 611, Laws of 1905, were ordered sent to the operating steam railroad companies of the State.

The matter of the failure of the following railroad companies to make quarterly reports for the quarters stated, was ordered referred to the Attorney-General for action to enforce the penalty: The Jamestown Street Railway Company, quarters ending December 31, 1904, and March 31, 1905; The Chautauqua Traction Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905; The Waverly, Sayre and Athens Traction Company, quarters ending December 31, 1904, and March 31, 1905; City Island Railroad Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905; Pelham Park Railroad Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905; Syracuse and Suburban Railroad Company, quarters ending September 30, 1903, December 31, 1904, and March 31, 1905; Schoharie Valley Railway Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905.

#### *Crossings.*

Application of the village of Lyons Falls, under section 61 of the Railroad Law, as to a continuance of Charlotte street in said village crossing the Utica and Black River Railroad (leased to and operated by the New York Central and Hudson River Railroad Company). Ordered hearing set for Monday, August 14, 1905, 3 p. m., at the office of the Board in the Capitol, Albany. (Grade Crossing Case No. 544.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street grade crossing of the New York and Harlem Railroad, its lessor, in the village of Tuckahoe, the construction of an overhead crossing of said railroad about 250 feet south of the present grade crossing at Main street, the construction of new pieces of streets leading to said proposed overhead crossing, and the construction of an overhead foot-bridge at the present location of the Main street grade crossing. Ordered hearing set for Thursday, August 3, 1905, 10 a. m., at the Tuckahoe passenger station on said railroad. (Grade Crossing Case No. 553.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Tibbets avenue, Railroad avenue and Hamilton avenue grade crossings of the New York and Harlem Railroad, its lessor, in the village of White Plains, the construction of an undercrossing of said railroad at a point about 800 feet north of the present grade crossing at Tibbets avenue, the construction of new pieces of streets to said undercrossing, the changing of location of the existing main tracks of said railroad to a point about 350 feet westerly of the present tracks at Railroad avenue, the railroad there to cross

Railroad avenue above grade and to pass westerly of the west end of Hamilton avenue without crossing said Hamilton avenue, Bronx street, which will be intersected by said tracks when relocated as proposed, to be constructed westerly of and parallel with said tracks from a point on Bronx street about 170 feet north of its present intersection with Mott street to Railroad avenue, and no crossing of said tracks and Bronx street to exist at the point where the present Bronx street will be met by said tracks when relocated as proposed. It is also proposed that Mott street will be crossed above grade by said relocated tracks. Ordered hearing set for Wednesday, August 2, 1905, 3 p. m., at the White Plains passenger station on said railroad. (Grade Crossing Case No. 551.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hartsdale avenue grade crossing of the New York and Harlem Railroad, its lessor, in the town of Scarsdale, Westchester county, the construction of an overhead crossing of said railroad about 300 feet south of the present grade crossing at Hartsdale avenue, the construction of new pieces of highway to said proposed overhead crossing, and the construction of a foot-bridge at the location of the present said Hartsdale avenue grade crossing. Ordered hearing set for Wednesday, August 2, 1905, 5 p. m., at the Scarsdale passenger station on said railroad. (Grade Crossing Case No. 552.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street and Quimby street grade crossings of its railroad and as to the closing and discontinuance of crossings of its railroad by three alleys or driveways north of Quimby street, in the village of Ossining, the construction of a new street on the east side of said railroad to Secor road, the construction of an overhead crossing of said railroad at a point about 110 feet south of the present passenger station on said railroad in Ossining,—the team traffic from Quimby street and the travel from said alleys or driveways north of Quimby street being proposed to be diverted through Water street to Broadway or Secor road,—the construction of an overhead crossing of said railroad at Broadway, and the construction of an overhead crossing of said railroad for foot passengers at Quimby street. Ordered hearing set for Tuesday, August 1, 1905, 11 a. m., at the passenger station of said company in Ossining. (Grade Crossing Case No. 550.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pondfield road grade crossings of the New York and Harlem Railroad, its lessor, in the village of Bronxville, the travel thereon to be diverted through Sagamore avenue to an overhead crossing of said railroad proposed to be constructed about 200 feet north of the present grade crossing at Pondfield road, with an approach on the east between Gramatan avenue and said proposed overhead bridge and on the west to said overhead bridge, parallel to and at right angles to the track, from the intersection with the continuation of Front avenue from Palmer avenue; also the construction of an undercrossing of said railroad for foot passengers at the point where Palmer avenue if now extended would cross said railroad. Ordered hearing set for Thursday, August 3, 1905, 11:30 a. m., at the passenger station on said railroad at Bronxville. (Grade Crossing Case No. 549.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Washington avenue and Dock street grade crossings of its railroad in the village of Hastings-on-Hudson, and the construction of new pieces of streets leading therefrom to an overhead crossing of said railroad proposed to be constructed about 200 feet north of the present grade crossing at Dock street. Ordered hearing set for Tuesday, August 1, 1905, 5 p. m., at the passenger station of said company on said railroad in Hastings-on-Hudson. (Grade Crossing Case No. 548.)

Petition of the mayor and common council of the city of Mount Vernon and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the Mt. Vernon avenue, Oak street and Fleetwood avenue grade crossings

of the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), it being proposed that the Mt. Vernon avenue and Oak street crossings shall be changed to undercrossings of the railroad, and that the Fleetwood avenue crossing of the railroad shall be changed to an undercrossing of the railroad; it is also proposed that South or Mechanic street, New York city, shall be taken across said railroad in an undercrossing. Ordered hearing set for Thursday, August 3, 1905, 2:30 p. m., at the passenger station on said railroad in Mt. Vernon. (Grade Crossing Case No. 545.)

Application of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to a switch track of its New York and Putnam division, in Yonkers, crossing the Union Railway (street surface electric) in Lake avenue. Ordered hearing set for Wednesday, August 2, 1905, 11 a. m., at the passenger station of the New York Central and Hudson River Railroad Company in Yonkers. (Grade Crossing Case No. 542.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, detail plans for the sub-structural work for the changed Mohawk river bridge were submitted to the Board by the company, together with a report thereon, dated June 15, 1905, from the superintendent of the grade crossing bureau. Ordered said plans approved. (Grade Crossing Case No. 360.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, detail plan for the sub-structure for bridge 381-B at Front street was submitted to the Board by the company, together with a report thereon, dated June 29, 1905, from the superintendent of the grade crossing bureau. Ordered said detail plan approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 8, 1904, as to the closing and discontinuance of the Van Anden street grade crossing of the New York Central and Hudson River Railroad in the city of Auburn and the construction of new pieces of street, a report, dated May 29, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 410.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the Ionia and East Bloomfield road grade crossing of the New York Central and Hudson River Railroad in the town of West Bloomfield, Ontario county, and the construction of new pieces of highway and an undercrossing of said railroad, a report, dated June 9, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 396.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing, a report, dated June 9, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 416.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a report, dated June 26, 1905, was received from the superintendent of the grade crossing bureau as to the estimated cost of the work including land and land damages. Ordered filed. (Grade Crossing Case No. 369.)

*Orders.*

Application of the Buffalo and Susquehanna Railway Company, under section 33 of the Railroad Law, as to highway crossing signs. Determination approving sign, etc., as shown by office original on file. (Case No. 3363.)

In the matter of the determination of this Board, dated November 2, 1904, in the application of the Erie Railroad Company (steam), under section 36 of the Railroad Law, for approval of an interlocking switch and signal apparatus to be installed at a grade crossing of the Erie Railroad and the Delaware, Lackawanna and Western Railroad (steam) east of the station in Binghamton. Ordered modified plan approved, as shown by office original modified determination on file. (Case No. 3237.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated June 20, 1905, as to the railroad of the Long Island Electric Railway Company (street surface electric) crossing the Long Island Railroad (steam) at a point where the Long Island Railroad crosses at grade the Jamaica and Hempstead Turnpike highway, east of Queens, borough of Queens, New York city. Ordered plan for V-shaped brass (instead of copper) trough to be constructed over the wire of the electric railroad approved, on condition that the trough extend about 50 feet from the nearest rail of the steam railroad. (Case No. 3303.)

Petition of the mayor and common council of the city of Elmira, under section 62 of the Railroad Law, as to the closing of the Pennsylvania avenue and Partridge street grade crossings of the Erie Railroad in said city and the construction of one undercrossing of said railroad to be situated about midway between the center lines of said existing grade crossings. Denied. (Grade Crossing Case No. 117.)

*Bills Approved.*

The following bills were approved:

*General Expenses.*

J. D. Shultz (expenses).....	\$28 50	
A. L. Judson (expenses).....	32 00	
Karl F. Colson (expenses).....	24 00	
W. M. Davis (expenses—May).....	77 50	
"Klips," E. C. Cuyler, Sec. and Treas.....	25 00	
C. E. Argersinger, P. M.....	4 00	
Great Bear Spring Company.....	3 90	
Western Union Telegraph Company.....	1 51	
Postal Telegraph-Cable Company, May.....	\$5 50	
Postal Telegraph-Cable Company, June....	8 38	
		13 88
Thomas J. Cowell, May.....	\$26 70	
Thomas J. Cowell, June.....	28 40	
		55 10
Georgina A. Jackson.....	1 50	
Fraser & Kelly.....	2 00	
Charles K. Baker, acting warden.....	50 05	
John R. McClellan.....	10 80	
Sampson & Murdock Co.....	4 00	
The Smith-Premier Typewriter Co.....	18 00	
National Express Co.....	333 15	
American Express Co.....	308 48	
Brandow Printing Co.....	50 25	
Logan, Swift & Brigham Env. Co., Div.....	17 30	
Matthew Bender Co.....	10 00	
Battery Place Realty Co., N. Y., June.....	\$150 00	
Battery Place Realty Co., N. Y., July.....	150 00	
		300 00
H. L. Townsend, New York.....	5 86	
George A. Traver, Superintendent, New York.....	2 70	
		<u>\$1,379 48</u>



*Grade Crossing Expenses.*

A. H. Sutermeister (expenses).....	\$41 40
James E. Brazee (expenses—May).....	\$45 25
James E. Brazee (expenses—June).....	62 20
	<hr/>
	107 45
W. M. Davis (expenses).....	55 00
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	\$203 85
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Recess until 7 p. m.

*AFTER RECESS—7 P. M.*

The Board again met. Present, Commissioners Baker, Dickey and Aldridge. The minutes of May 31, June 1, 7, 13, 15, 20, 21 and 28 were read and approved

*Complaints.*

B. W. Dinsmore against the New York City Railway Company, complaining of noise made by cars of that company on Amsterdam avenue. Copy sent company. (Case No. 3377.)

F. W. Gardner of Hoosick Falls against the Boston and Maine Railroad as to weeds on its right of way along his farm at Petersburg Junction. Copy sent company. (Case No. 3381.)

S. H. Rudd against the Rutland Railroad Company as to condition of the fence of said company along his farm near Hoosick. Letter received from the company stating that the fence has been erected. Copy sent complainant. This case was closed on the minutes of November 2, 1904, and has not been reopened. (Case No. 3217.)

J. W. Simpson of Middletown against the Pochuck Railroad Company as to a highway crossing of its railroad and as to passenger train service on its railroad. Copy sent company. (Case No. 3371.)

West Side Taxpayers' Association of New York city against the New York Central and Hudson River Railroad Company as to its tracks on Eleventh avenue between Thirtieth and Sixtieth streets and operation of freight trains on said tracks. Letter dated June 29, 1905, was received from the company stating that the recommendations of the Board would be complied with. Copy sent complainants. Ordered that the inspector of grade crossings report if the recommendations have been complied with. This case was closed on the minutes of May 31, 1905, and has not been reopened. (Case No. 3322.)

Board of Trade of the Eastern District, Brooklyn, against The Brooklyn Heights Railroad Company as to operation of the Meeker avenue surface line. Letter, dated June 28, 1905, was received from the company in relation to change in passenger car service taking effect July 17, 1905. Copy sent complainants. This case was closed on the minutes of May 31 1905, and has not been reopened. (Case No. 3330.)

J. M. Hastings for H. E. Brown against the Dansville and Mount Morris Railroad as to lack of fences on its railroad along the lands of Mr. Brown near Mount Morris. Answer of company received, stating that the fences would be repaired. Copy sent complainant. Reply of complainant to answer of company received. Letter dated June 16, 1905, written company in the matter. Letter dated June 20, 1905, received from the company. Closed. (Case No. 3345.)

D. J. Bienenstock of Brooklyn against The Brooklyn Heights Railroad Company as to overcrowding of cars on its Rockaway avenue line. Copy sent company. The electrical expert has been ordered to make a report in this matter. (Case No. 3369.)

Homer W. Case of Clinton Corners against the Poughkeepsie and Eastern Railway Company in relation to farm crossing on his farm, fences, cattle guards, etc. Answer of company received. Copy sent complainant. Reply of complainant received. Closed. (Case No. 3344.)

Woodlawn Taxpayers' Association of New York city against the Union Railway Company as to a continuous ride on the Union Railway and the New York City Railway from the city limits to the Battery with transfers at connecting points. A copy of this complaint was not sent to the company

but the case was ordered closed, the Board having, on June 21, 1905, made recommendations as to the operation of the Union Railway Company. (Case No. 3364.)

Theodore S. Rumney, Jr., against the Interborough Rapid Transit Company (Manhattan Railway division) in relation to employees on the Manhattan Railway not wearing badges. Letter received from the company stating that "We have taken steps, however, to have our men provided with badges at once." Copy sent complainant. Closed. (Case No. 3349.)

George W. Jump & Company, of Brooklyn, against the Central New England Railway Company in relation to charges for car service. The New York, Ontario and Western Railway Company and the Poughkeepsie and Eastern Railway Company were also communicated with in relation to this complaint. Letter dated June 8, 1905, received from the New York, Ontario and Western Railway Company. Copy sent complainants. Letter dated June 15, 1905, received from the Poughkeepsie and Eastern Railway Company. Copy sent complainants. Ordered letter written Poughkeepsie and Eastern Railway Company as shown by copy on file. (Case No. 3336.)

Edward C. Buchenau of New City, Rockland county, against the Erie Railroad Company as to additional train service on said company's railroad from New City to Nanuet. Reply of complainant to answer of company received. In this case the company has put on another passenger train. (Case No. 3342.)

D. H. Angell of Old Chatham against the Rutland Railroad Company as to condition of its fence along his farm. Answer of company received stating that the fence would be repaired. Copy sent complainant. Closed. (Case No. 3361.)

Bert Bradley against the Rutland Railroad Company as to the condition of its fences along his farm near Old Chatham. Copy sent company. Answer of company received stating that the fences would be constructed. Copy sent complainant. Closed. (Case No. 3362.)

John Gaul against the Interborough Rapid Transit Company (Manhattan Railway division) as to northbound trains not stopping at the Forty-seventh street and Fifty-third street stations on the Third avenue line of the Manhattan Railway Company. Answer of company received. Copy sent complainant. Closed. (Case No. 3353.)

Verbal complaint against the New York Central and Hudson River Railroad Company as to operation of locomotive engines attached to trains on the Attica branch of said railroad, reversed. Letter dated June 1, 1905, received from complainant, F. C. Stevens. Closed. (Case No. 3305.)

John Head of Boston Corners against the Poughkeepsie and Eastern Railway Company as to condition of its fences along his farm. Copy sent company. Answer of company received. Copy sent complainant. Reply of complainant received. Copy of reply sent company. Letter dated June 17, 1905, received from company stating that the fence would be built. Copy sent complainant. Closed. (Case No. 3356.)

In the matter of the recommendations of this Board, dated June 21, 1905, in complaints of the Van Nest Property Owners' Association and others against the Union Railway Company (Cases Nos. 3236, 3259, 3154), a letter, dated June 24, 1905, was received from the company saying that "These recommendations will have our early consideration." Ordered that the inspector of grade crossings make a report as to compliance with these recommendations.

In the matter of the recommendations of this Board to The Brooklyn Heights Railroad Company, dated February 9, 1905, as to service rendered the public, a letter, dated June 27, 1905, was received from A. P. Hazen of Brooklyn complaining as to the service on the Flatbush Avenue line. The electrical expert has been instructed to make a report in this matter. (Case No. 3296.)

Taxpayers' Nonpartisan Association, Third Ward, Borough of Queens, New York city, against the New York and Queens County Railway Company as to service rendered the public to College Point. Copy sent company. Answer of company received. Copy sent complainants. The electrical expert has been instructed to make a report in this matter. (Case No. 3365.)

*Applications.*

Letters and correspondence in the matter of employment of locomotive boiler inspector under chapter 611 of the Laws of 1905, were submitted to the Board. Ordered filed.

Letters and correspondence in the matter of the appointment of a Secretary of the Board were submitted to the Board. Ordered filed.

*Reports.*

Report of the superintendent of the grade crossing bureau, dated June 26, 1905, as to substitution of steel guardrail for wooden guardrail on the Niagara Gorge Railroad and as to a railing at the Whirlpool station on said railroad having been constructed. Ordered filed. (Case No. 2279.)

The matter of inspection of locomotive engine boilers was closed. (Case No. 3075.)

In the matter of the recommendations of this Board, dated April 27, 1905, as to the construction of derailing switches in the Wallkill Transit Company's railroad (street surface electric) on each side of the Erie Railroad (steam) at a point where said railroads cross at grade in North street, Middletown, a report, without date, was received from the inspector of grade crossings to the effect that these derails have not been installed. Ordered that this matter be referred to the Attorney-General for his consideration and action. (Case No. 3340.)

Report of the superintendent of the grade crossing bureau, dated June 12, 1905, as to the derailment of a passenger train on the New York Central and Hudson River Railroad at St. Johnsville, February 8, 1905. Ordered copy sent company. This report is the second report made, the first having been returned to the superintendent of the grade crossing bureau for further consideration. This report takes the place of the first report. (Steam Case No. 17—1905.)

Report of the inspector, dated June 7, 1905, of a collision between passenger trains on the New York and Harlem division of the New York Central and Hudson River Railroad at Bronx Park on May 4, 1905. Ordered copies sent companies. This collision was between a New York, New Haven and Hartford train and a New York and Harlem train. (Steam Case No. 20—1905.)

Report of the superintendent of the grade crossing bureau, dated July 3, 1905, as to dropping of crown sheet of locomotive engine No. 2701 of the New York Central and Hudson River Railroad Company, drawing a freight train, about one mile east of St. Johnsville, on June 20, 1905. Ordered copy sent company. (Steam Case No. 25—1905.)

Report of the superintendent of the grade crossing bureau, dated June 9, 1905, as to rear collision between cars on the Syracuse, Lakeside and Baldwinsville Railway, May 30, 1905, near its Lakeside Park Station. Ordered that the electrical expert make a report as to the recommendations in this report. (Street Case No. 12—1905.)

Report of the inspector, dated June 26, 1905, as to a rear collision between cars on the Citizen's Railroad, Light and Power Company's railroad on Beekman street, Fishkill, June 23, 1905. Ordered copy sent company with a letter of recommendation as shown by office original letter on file. (Street Case No. 13—1905.)

In the matter of the recommendations of this Board as to the physical condition of the Ogdensburg Street Railway, a letter, dated June 15, 1905, was received from the company. The electrical expert has been instructed to report again as to the recommendations of the Board. (Case No. 2795.)

Report of the inspector, dated June 24, 1905, of his inspection of the Greenwich and Johnsonville Railway. Ordered copy sent company with letter of recommendation as shown by office original letter on file. (No. 7—1905.)

Report of the inspector, dated June 23, 1905, of his inspection of the Fonda, Johnstown and Gloversville Railroad (steam portion). Ordered copy sent company with a letter of recommendation as shown by office original letter on file. (No. 6—1905.)

Report of the inspector, dated June 6, 1905, of his inspection of the Schoharie Valley Railway. A copy of this report was sent to the company with a letter making the recommendations therein the recommendations of this Board. Letter, dated June 14, 1905, received from the company stating that the recommendations would be complied with. The superintendent of the grade crossing bureau has been instructed to report if the recommendations are complied with. (No. 3—1905.)

Report of the inspector, dated June 6, 1905, of his inspection of the Middleburg and Schoharie Railroad. Ordered copy sent company with a letter of recommendation as shown by office original letter on file. (No. 4—1905.)

Report of the inspector, dated June 7, 1905, of his inspection of the Staten Island Rapid Transit Railway and the Staten Island Railway. Ordered copy sent Staten Island Rapid Transit Railway for itself and the Staten Island Railway with letter of recommendation as shown by office original letter on file. (No. 5—1905.)

In the matter of the recommendations of this Board contained in a letter dated June 14, 1905, to The Brooklyn Heights Railroad Company as to the physical condition of the Brooklyn Union Elevated Railroad, its lessor, a letter, dated June 16, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 2—1905.)

In the matter of the recommendations of this Board contained in a letter, dated June 14, 1905, to the Interborough Rapid Transit Company as to the physical condition of the Manhattan Railway, its lessor, a letter, dated July 3, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 1—1905.)

#### *Orders.*

William M. McMahon, New Utrecht Avenue Property Owners' Association and Borough Park and Blythebourne Protective Association against The Brooklyn Heights Railroad Company as to running of express trains through New Utrecht avenue, Brooklyn, which trains do not stop at 58th street. Recommendation to the company as shown by office original recommendation on file that express trains as well as local trains stop at 58th street. (Case No. 3338.)

The Board adjourned.

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#### ALBANY, JULY 13, 1905.

The following action was taken by the Board through correspondence:

#### *Reports.*

Report of the superintendent of the grade crossing bureau, dated July 8, 1905, as to a collision May 23, 1905, between a freight train of The Delaware and Hudson Company and a car of the United Traction Company at the Albany street grade crossing of the railroads of said companies in Green Island. Ordered copy sent company with letter of recommendation as to this and other crossings, as shown by office original letter on file. (Street Case No. 11—1905.)

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#### ALBANY, JULY 15, 1905.

The following action was taken by the Board. See correspondence with the Commissioners:

#### *Reports.*

Report of the inspector, dated July 15, 1905, of his inspection of the Buffalo, Attica and Arcade Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (Case No. 15—1905.)

## ALBANY, JULY 18, 1905.

In the matter of the complaint of William M. MacMahon of Brooklyn, New Utrecht Avenue Property Owners' Association of Brooklyn and the Borough Park and Blythebourne Protective Association of Brooklyn against The Brooklyn Heights Railroad Company, in which this Board made a recommendation, dated July 6, 1905, the following action was taken by the Board: see correspondence with the Commissioners. It was ordered that the company be informed that unless it notify this Board by Tuesday, July 25, 1905, that it will at once comply with said recommendation as to stopping all of its passenger trains operated in both directions through New Utrecht avenue at the Fifty-eighth street, New Utrecht avenue, station on said company's railroad, the facts in the case will be presented to the Attorney-General for his consideration and action. (Case No. 3338.)

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## STONY FORD, JULY 19, 1905.

Hearing before Commissioner Dickey (by delegation of the Board) at 12 m. (this hearing was called for 11 a. m., but train was late), in the matter of the petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of two highway grade crossings of its railway at its Stony Ford station, town of Wallkill, Orange county, and the construction of new pieces of highway and an overhead bridge crossing of said railway to be located between the two existing grade crossings. E. Canfield, C. E. Knickerbocker and George Marsden appeared for the petitioner; H. B. Royce, attorney, E. Smith Webb, supervisor, William Bull, David W. Shaw, William Puff, highway commissioner, and Seeley Greene, highway commissioner, appeared for the town board of the town of Wallkill, in favor of the petition; J. H. Ford, a property owner, appeared in person, not in opposition. After hearing arguments and after explanations of the proposed changes by Mr. Knickerbocker, who is engineer of maintenance of way of the company, the matter was held open. There is to be no further hearing. Commissioner Dickey inspected the crossings and locality. (Grade Crossing Case No. 442.)

## 12:30 P. M., CRYSTAL RUN, JULY 19, 1905.

Hearing before Commissioner Dickey (by delegation of the Board), in the matter of the petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of three grade crossings of its railway near the Crystal Run station on said railway in the town of Wallkill, Orange county, and the construction of new pieces of highway and one overhead bridge crossing of said railway. E. Canfield, C. E. Knickerbocker and George Marsden appeared for the petitioner; H. B. Royce, attorney, E. Smith Webb, supervisor, William Bull, David W. Shaw, William Puff, highway commissioner, and Seeley Greene, highway commissioner, appeared for the town board of the town of Wallkill; Mrs. A. C. Ireland, a property owner, appeared in person; W. F. Brown, a property owner, appeared in person; C. W. Harland, a property owner, appeared in person; Mrs. W. R. Wisner, a property owner, appeared in person; Dr. A. C. Santee also appeared. Mr. Brown appeared in opposition. The other property owners appeared tentatively in opposition. After hearing evidence and arguments the evidence was closed but the matter was held open. From statements of the property owners at this hearing it appears that they desire that, if the petition is granted, the order shall contain a provision that the proposed new piece of highway on the south side of the railway shall at some points be placed further away from the railway. Commissioner Dickey inspected the crossings and locality. (Grade Crossing Case No. 459.)

3 P M., CENTERVILLE STATION, JULY 19, 1905.

Hearing before Commissioner Dickey (by delegation of the Board), in the matter of the petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of its railway by a highway known as the Centerville road at the Centerville station on said railway in the town of Fallsburgh, Sullivan county, and the construction of new pieces of highway and an overhead bridge crossing of the railway. This hearing was called at the Centerville station on said railway but was adjourned to the town hall in Centerville. F. Canfield, C. E. Knickerbocker and George Marsden for the petitioner; George H. Smith, attorney, Delbert Merritt, supervisor (notice of this hearing was sent to John S. Simpson, supervisor), L. W. Lawrence, highway commissioner (the notice of this hearing to the highway commissioner was sent to F. J. Stratton), R. J. Broome, justice of the peace, Morris Downey, justice of the peace, Gerald Eidel, town clerk, appeared for the town board, in opposition; Ellsworth Baker and George H. Smith appeared for John McDowell, Herman Karsten, Francis R. Hill and John A. Smith, property owners, in opposition. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. Commissioner Dickey inspected the crossing and locality. (Grade Crossing Case No. 458.)

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ALBANY, JULY 20, 1905.

The Board approved bill of William McNeilly (postage stamps) for \$100; Commissioner Dunn approved this bill by delegation of the Board.

The Board, acting through Commissioners Dunn and Dickey ordered that in the matter of the complaint of William M. MacMahon of Brooklyn, New Utrecht Avenue Property Owners' Association of Brooklyn and the Borough Park and Blythebourne Protective Association of Brooklyn against The Brooklyn Heights Railroad Company, that under section 161 of the Railroad Law, a further hearing be given at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city, on Friday, July 28, 1905, at 11:30 a. m., the facts in the case not to be presented to the Attorney-General in the meantime. (Case No. 3338.)

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CORTLAND, JULY 26, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Baker (by delegation of the Board).

#### *Hearings.*

Petition of the Syracuse, Binghamton and New York Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Cortland and Homer road highway grade crossing of its railroad in the town of Cortlandville, Cortland county, and the construction of an overhead crossing of said railroad about 500 feet north of the present grade crossing. Dickinson & Duffey for the petitioner and for the Cortland County Tracton Company; A. Roscoe Rowe (Mr. Rowe is the supervisor of the town but did not appear as supervisor but as a taxpayer), in opposition; C. H. Munson, a property owner, in opposition; C. Brandenstein, a property owner, in opposition; L. J. Fitzgerald, a property owner, in opposition; William A. Smith as agent for William Fitz and Louisa Fitz, property owners, in opposition; Daniel Kiernan for Abbie E. Kiernan, a property owner, in opposition; Rowland L. Davis for W. A. Smith and other property owners, in opposition; John Hays for the Jeremiah Hays estate, not in opposition; Daniel R. Thomas, highway commissioner of the town; G. A. Wilber, a

property owner; A. Gibson, a property owner. After hearing evidence and arguments, the hearing was adjourned indefinitely. Commissioners Dunn and Baker inspected the crossing and locality. (Grade Crossing Case No. 539.)  
The Board adjourned.

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NEW YORK, JULY 28, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

William M. MacMahon, New Utrecht Avenue Property Owners' Association, and Borough Park and Blythebourne Protective Association against The Brooklyn Heights Railroad Company as to running of express trains through New Utrecht avenue, Brooklyn, which trains do not stop at Fifty-eighth street. This hearing was in relation to compliance with the recommendation of the Board, dated July 6, 1905. W. F. Sheehan and J. L. Wells appeared for the company; Lewis J. Doolittle appeared for complainants. After hearing evidence and arguments the hearing as to compliance with the recommendation was closed. (Case No. 3338.)

*Reports.*

A report, dated July 22, 1905, was received from the superintendent of the grade crossing bureau, as to lack of guard wire above the trolley wire of the Kingston Consolidated Railroad from the Strand to the car barn on Broadway, and from the car barn to the West Shore railroad, in the city of Kingston. Ordered letter written company as shown by office original on file. (Case No. 3343.)

In the matter of the recommendations of this Board to The Brooklyn Heights Railroad Company, dated February 9, 1905, as to service rendered the public, in which a letter, dated June 27, 1906, has been received from A. P. Hazen of Brooklyn, complaining as to the service on the Flatbush avenue line, the electrical expert made a report, dated July 24, 1905. Ordered copy of report sent company with a letter of recommendation as shown by office original letter on file. (Case No. 3296.)

*Orders.*

Application of the Delaware and Eastern Railroad Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3302.)

The Board adjourned.

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OSSINING, AUGUST 1, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street and Quimby street grade crossings of its railroad and as to the closing and discontinuance of crossings of its railroad by three alleyways or driveways north of Quimby street in the village of Ossining, the construction of a new street on the east side of said railroad to Secor road, the construction of an overhead crossing of said railroad at a point about 110 feet south of the present passenger station on said railroad in Ossining, the team traffic from Quimby street and the travel from said alleyways or

driveways north of Quimby street being proposed to be diverted through Water street to Broadway or Secor road,—the construction of an overhead crossing of said railroad at Broadway and the construction of an overhead crossing of said railroad for foot passengers at Quimby street. A. H. Harris and C. C. Paulding for the petitioner; Frank L. Young for the president and board of trustees of the village of Ossining, not in opposition, but asking that certain additions be made to the plan proposed; J. M. Terwilliger for the Cronk estate; F. A. Stratton for the Northern Westchester Lighting Company in relation to a change in the plan proposed; Smith Lent for Washburne & Todd; Phillip B. Adams for Armour & Company; Samuel Watson for Anna A. Brandreth, John Turner and Harriet Turner, property owners; John Gibney for George W. Cartwright, the Rigney estate and Jacob Ruppert's Company, property owners, not in opposition but asking that certain additions be made to the plan; John B. Faure for the board of trade of Ossining as to addition to plan. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The Commissioners inspected the locality and crossings. (Grade Crossing Case No. 550.)

The Board took a recess until 2 p. m.

#### TARRYTOWN, AUGUST 1, 1905.

##### AFTER RECESS—2 P. M.

Present, Commissioners Dunn, Baker, Dickey and Aldridge.

##### *Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to changing the Main street grade crossing of said company's railroad in the village of Tarrytown to an undercrossing in the line of the present grade crossing and as to changing the Wildey street grade crossing of said company's railroad in said village from grade to an undercrossing of the railroad in the line of the present grade crossing, and as to the construction of an undercrossing of said company's railroad for pedestrians alone in the line of Dock street. A. H. Harris and C. C. Paulding for the petitioner; Frank V. Millard for the village of Tarrytown and property owners, in opposition; Seth Bird for James Bird, a property owner, in opposition; F. A. Stratton for the Westchester Lighting Company; Cyrus A. Bishop for the Samuel Requa estate, in opposition; J. C. Shotts for himself, in opposition; Arthur W. Birkins for Mrs. L. Andrews. After hearing evidence and arguments the hearing was adjourned until Wednesday, August 16, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York. This hearing was subsequently postponed to a date and place to be thereafter fixed. (Grade Crossing Case No. 535.) Mr. Harris took answers of Mr. Millard, Mr. Bird and Mr. Bishop, filed on this date, and is to return them to the office. The Commissioners inspected the locality and crossings in question.

The Board took a recess until 3:30 p. m.

#### IRVINGTON, AUGUST 1, 1905.

##### AFTER RECESS—3:30 P. M.

Present, Commissioners Dunn, Baker, Dickey and Aldridge.

##### *Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street grade crossing of its railroad in the village of Irvington and the construction of new pieces of streets leading therefrom to an overhead crossing of said railroad proposed to be constructed about 400 feet north of the present grade crossing at Main street. A. H. Harris and C. C.



Paulding for the petitioner; Cyrus A. Bishop for the village and for property owners, in opposition; Harcourt Bull for the J. C. Turner Cypress Lumber Company, in opposition; J. C. O'Connor for Mrs. Gurney, a property owner; C. H. Matthiessen appeared in person, in opposition to the plan proposed so far as it affects an existing private crossing of the railroad which he uses; Henry C. Griffin for the Burnham-Hitchings-Pierson Company; William A. Burnham, in opposition to the plan proposed; M. A. Broderick for Ellen Broderick, a property owner, in opposition to the plan proposed; F. A. Stratton for the Westchester Lighting Company. After hearing arguments, and it appearing that notice of this hearing had not been published in the Irvington News because said newspaper had gone out of existence, it was ordered that a hearing in the matter of this petition be given by the Board at its New York office, room 406, Whitehall building, 17 Battery place, New York city, on Wednesday, August 16, 1905, 11:30 a. m., regular notice under the statute of this hearing to be given. The Commissioners inspected the locality and crossing. (Grade Crossing Case No. 536.)

The Board took a recess until 5 p. m.

HASTINGS-ON-HUDSON, AUGUST 1, 1905.

AFTER RECESS—5 P. M.

Present, Commissioners Dunn, Dickey and Aldridge.

*Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Washington avenue and Dock street grade crossings of its railroad in the village of Hastings-on-Hudson and the construction of new pieces of streets leading therefrom to an overhead crossing of said railroad proposed to be constructed about 200 feet north of the present grade crossing at Dock street. A. H. Harris for the petitioner; Louis F. Murray, attorney for the village, and F. G. Zinsser, president of the village, for the village of Hastings-on-Hudson; E. B. Barnett for residents, in opposition; F. X. Donoghue for Margaret Malloy, a property owner; Charles D. Millard for Charles H. Beavers, Bridget Maher and Anna Folich, property owners; Charles H. Ketcham for George E. Ketcham, a property owner; E. E. Munson as executor of the estate of George Munson, in opposition to the plan proposed. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The Commissioners inspected the crossings and locality in question. (Grade Crossing Case No. 548.)

The Board adjourned.

YONKERS, AUGUST 2, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Petition of the mayor and common council of the city of Yonkers and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pier street, Fernbrook street, Dock street, Wells avenue and Ashburton avenue grade crossings of the New York Central and Hudson River Railroad, the changing of the present overgrade crossing of said railroad by Main street to an undercrossing, the raising of the present Vark street and Babcock place overcrossings of said railroad, it being proposed that the travel from the Pier street and Fernbrook street crossings shall be diverted by the construction of a new piece of highway on the westerly side of said railroad and by the existing Bridge street on the easterly side of said railroad to an over-

head crossing of said railroad proposed to be constructed at a point about 105 feet south of the present Fernbrook street grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Dock street grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Wells avenue grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Ashburton avenue grade crossing of said railroad. Francis A. Winslow for the city of Yonkers; C. C. Paulding for the New York Central and Hudson River Railroad Company; Sheehan & Collin (Charles T. Lark appearing) for George J. Roberts, a property owner; F. A. Stratton and John G. Saxe (of Sherman & Sterling), for the Westchester Lighting Company; Ludlow, Townsend & Timpson (Mr. Ludlow appearing), for the executors and trustees under the last will and testament of the estate of James B. Ludlow, Jr., deceased, for James B. Ludlow and Anna Ludlow Winters, individually, for the trustees under the last will and testament of Henry M. Schoepflin, deceased, property owners, in opposition to the plan proposed; H. W. Ely for Sarah Price, a property owner; William H. Richardson for George McClellan, Anna L. Van Nest and Laura G. Richardson, property owners; James S. Fitch for Henry Dale; Lavinia Lally (Miss Lally was not present) for herself, Catherine M. Lally and Emelie Lally, property owners, in opposition to the plan proposed; H. S. Ford, a property owner, appeared in person; Thomas Fearon, a property owner, appeared in person; Thomas Murphy of the Pure Oil Company, a property owner; Michael J. Hays, a property owner, appeared in person; Will Clark, a property owner, appeared in person. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. This hearing was called at the station of the company as per notice, and was from there adjourned to the common council chamber in the city hall. (Mr. Ludlow took opposition, Ex. Ludlow No. 1.) The Commissioners inspected the locality and crossings in question. (Grade Crossing Case No. 533.)

Application of the New York Central and Hudson River Railroad Company, under section 68 of the Railroad Law, as to a switch track of its New York and Putnam division in Yonkers crossing the Union Railway (street surface electric) in Lake avenue. C. C. Paulding for the applicant; H. A. Robinson for the Yonkers Railroad Company; Francis A. Winslow for the city; J. C. Shotts in person. After hearing evidence and arguments the hearing was closed. This hearing was set for the station of the New York Central and Hudson River Railroad Company but was adjourned to the common council chamber in the city hall. This application should have applied to the Yonkers railroad instead of the Union Railway, but Mr. Robinson waived this point. (Grade Crossing Case No. 542.)

The Board took a recess until 3 p. m.

WHITE PLAINS, AUGUST 2, 1905.

AFTER RECESS—3 P. M.

Present, Commissioners Dunn, Baker, Dickey and Aldridge.

#### *Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the railroad law, as to the closing and discontinuance of the Tibbets avenue, Railroad avenue and Hamilton avenue grade crossings of the New York and Harlem Railroad, its lessor, in the village of White Plains, the construction of an undercrossing of said railroad at a point about 800 feet north of the present grade crossing at Tibbets avenue, the construction of new pieces of streets to said undercrossing, the changing of location of the existing main tracks of said railroad to a point about 350 feet westerly of the present tracks at Railroad avenue, the railroad there to cross Railroad avenue above grade and to pass westerly of the west end of Hamilton avenue without crossing said Hamilton avenue,—Bronx street, which will be inter-

sected by said tracks when relocated as proposed, to be constructed westerly of and parallel with said tracks from a point on Bronx street about 170 feet north of its present intersection with Main street to Railroad avenue, and no crossing of said tracks and Bronx street to exist at the point where the present Bronx street will be met by said tracks when relocated as proposed. It is also proposed that Mott street will be crossed above grade by said relocated track. C. C. Paulding for the petitioner; Henry T. Dykeman for the village, in opposition. H. C. Henderson, a property owner, appeared in person, in opposition to the plan proposed; F. W. Clark appeared for the estate of John Read; Louis C. Plant for Margaret Q. Daly, Armelia Armbuster and other property owners; Hughes & Holden for Tomy Richards; W. B. Tibbets for Howard Schermerhorn a property owner. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The Commissioners inspected the locality and crossings in question. (Grade Crossing Case No. 551.)

The Board took a recess until 5 p. m.

SCARSDALE, AUGUST 2, 1905.

AFTER RECESS—5 P. M.

Present, Commissioners Dunn, Baker, Dickey and Aldridge.

#### *Hearings.*

Petition of the town board of the town of Eastchester, Westchester county, and the New York Central and Hudson River Railroad Company, joined, under section 62 of the railroad law, as to the closing and discontinuance of the Chambers grade crossing of the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) and the construction of an overhead crossing of said railroad proposed to be constructed at a point immediately south of said present grade crossing. Henry C. Merrett, supervisor of the town, appeared for the town; C. C. Paulding for the New York Central and Hudson River Railroad Company; J. Warren Thayer for the Scarsdale estates. After hearing evidence and arguments the evidence was closed but the matter was held open. The Commissioners inspected the crossing and locality in question. (Grade Crossing Case No. 534.)

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hartdale avenue grade crossing of the New York and Harlem Railroad, its lessor, in the town of Scarsdale, Westchester county, the construction of an overhead crossing of said railroad about 300 feet south of the present grade crossing at Hartdale avenue, the construction of new pieces of highway to said proposed overhead crossing, and the construction of a foot bridge at the location of the present said Hartdale avenue grade crossing. C. C. Paulding for the petitioner; George W. Birchell for the city of New York; Frank V. Millard for the town of Greenburg; Frederick Van Wyck for the Highway Commissioner of the town of Scarsdale; G. W. Hauschold, justice of the peace; E. W. Wallin for Miss Emily O. Butler, a property owner. There was no evidence taken at this hearing but statements not under oath were made, it appearing at the hearing that part of the structure of the proposed overhead crossing will be in the town of Greenburg, which town was not notified of this hearing. The Board determined that another hearing in this matter, with notice given under the statute, would be held in the future. The Commissioners inspected the locality and crossing in question. (Grade Crossing Case No. 552.)

The Board adjourned.

TUCKAHOE, AUGUST 3, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker, Dickey and Aldridge.

*Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street grade crossing of the New York and Harlem Railroad, its lessor, in the village of Tuckahoe, the construction of an overhead crossing of said railroad about 250 feet south of the present grade crossing at Main street, the construction of new pieces of streets leading to said proposed overhead crossing, and the construction of an overhead foot bridge at the present location of the Main street grade crossing. C. C. Paulding for the petitioner; H. D. Lent for the village and for the Dusenberry estate, property owners, in opposition to the plan proposed; William Rubly, president of the village, also appeared for the village, in opposition to the plan proposed; Palmer Coolidge for Oliver W. Hall, a property owner. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The Commissioners inspected the locality and crossing in question. This hearing was called at the station of the New York Central and Hudson River Railroad Company as per notice and was from there adjourned to the town hall. (Grade Crossing Case No. 553.)

The Board took a recess until 11:30 a. m.

BRONXVILLE, AUGUST 3, 1905.

AFTER RECESS—11:30 A. M.

Present, Commissioners Baker, Dickey and Aldridge.

*Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pondfield road grade crossing of the New York and Harlem Railroad, its lessor, in the village of Bronxville, the travel thereon to be diverted through Sagamore avenue to an overhead crossing of said railroad proposed to be constructed about 200 feet north of the present grade crossing at Pondfield road, with an approach on the east between Gramatan avenue and said proposed overhead bridge, and on the west to said overhead bridge parallel to and at right angles to the track from the intersection with the continuation of Front avenue from Palmer avenue; also the construction of an undercrossing for foot passengers of said railroad at the point where Palmer avenue, if now extended, would cross said railroad. C. C. Paulding for the petitioner; Ellis W. Gladwin, president of the village, for the village, in opposition to the plan proposed; Frank R. Chambers, W. W. Kent and A. E. Smith for a committee of citizens of Bronxville, in opposition to the plan proposed; W. G. Alger for himself individually, as a property owner, and for Henry C. Alger and Jennie A. Jenks, property owners; William H. Thatcher as trustee of Christ Church, Bronxville; Herman Duden for Sophia Duden and William Duden, property owners, in opposition; Kate I. Buckley, a property owner, appeared in person, in opposition; W. V. Lawrence, a property owner, appeared in person; Walter B. Dixon, a property owner, appeared in person; D. J. Burns appeared for the Ward-Leonard Electric Company, property owners; E. and G. Pick, property owners, appeared in person; Robert F. Byrne, a property owner, appeared in person; Frederick Sprenger, a property owner, appeared in person; L. D. Garrett appeared in person; Dennis O'Neil, a property owner, appeared in person; John Hargrave appeared in person; Alfred E. Smith also appeared as attorney for property owners, not named; F. Scofield appeared in person; Theodore Dewitt for the Dewitt estate, property owners; H. H. Becker, a property owner, appeared in person; Henry C. Hainhorst, a property owner, appeared in person; Carl Tiemann, a property owner, appeared in person; F. H. Hetting, a property owner, appeared in person; Henry W. Smith appeared in person. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. This hearing was called at the railroad sta-

tion but was adjourned to the village hall. The village is to file with the Board a statement of how it believes this crossing should be eliminated. (Grade Crossing Case No. 549.)

The Board took a recess until 2:30 p. m.

MOUNT VERNON, AUGUST 3, 1905.

AFTER RECESS—2:30 P. M.

Present, Commissioners Baker, Dickey and Aldridge.

*Hearings.*

Petition of the mayor and common council of the city of Mount Vernon and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the Mount Vernon avenue, Oak street and Fleetwood avenue grade crossings of the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), it being proposed that the Mount Vernon avenue and Oak street crossings shall be changed to under-crossings of the railroad and that the Fleetwood avenue crossing of the railroad shall be changed to an overcrossing of the railroad. It is also proposed that South or Mechanic street shall be taken across said railroad in an under-crossing (South or Mechanic street is in New York city). C. C. Paulding for the New York Central and Hudson River Railroad Company; Roger M. Sherman, corporation counsel, and William A. Miles, commissioner of public works, for the city of Mount Vernon; John C. Hume for the city of New York; F. A. Stratton for the Westchester Lighting Company; Sidney A. Syme for Wilhelmine Voss; Herbert G. Lent for Mary S. Behrmann, Frederick W. Behrmann and Henry Palm, Jr., property owners; F. A. Gaynor for the Union Railway Company; Joseph S. Wood for himself and other property owners; C. D. Mandeville for Aaron Weinberger, William J. R. Patterson and Charles L. Fulton; G. F. McKinney, a property owner, appeared in person; Charles H. Farrington appeared in person; O. Hufend for the Fourth Ward Taxpayers' Association of Mount Vernon, in opposition to the plan proposed; Oscar Mayer for the Bronx Company. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. Mr. Hufend is to file a brief with the Board before the next hearing. The city is to file here an enlarged copy of the blue print plan of these crossings attached to the petition. (Grade Crossing Case No. 545.)

The Board adjourned.

NIAGARA FALLS, AUGUST 4, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Dickey and Aldridge.

*Hearings.*

Adjourned hearing in the matter of the petition of the mayor and common council of the city of Niagara Falls, under section 62 of the Railroad Law, as to changing the Niagara street grade crossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company in said city to an undercrossing. F. J. Mackenna, corporation counsel, for the petitioners; W. P. Cooke for the Buffalo, Thousand Islands and Portland Railroad Company; W. L. Marcy for the Erie Railroad Company; King, Leggett & Brown (Mr. King appearing) for The Electric City Railway Company; Augustus Thibaudeau for Charles A. Terwilliger, a property owner. After hearing evidence and arguments the hearing was adjourned until Tuesday, August 15, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Grade Crossing Case No. 501.)

Application of The Electric City Railway Company, under section 68 of the Railroad Law, as to its railway crossing on Niagara street, Niagara Falls, the Erie Railroad and right of way of the Buffalo, Thousand Islands and Portland Railroad Company,—the applicant company asking that it may be permitted temporarily to make this crossing at grade. King, Leggett & Brown (Mr. King appearing) for the applicant; W. L. Marcy for the Erie Railroad Company; W. P. Cooke for the Buffalo, Thousand Islands and Portland Railroad Company; F. J. Mackenna, corporation counsel, for the city of Niagara Falls. After hearing evidence and arguments the hearing was adjourned until Tuesday, August 15, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3330.)

In the matter of the application of the city of Niagara Falls, under section 62 of the Railroad Law, as to changing the Pine street grade crossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company to an overcrossing, in which matter the evidence on the merits was closed on July 22, 1903, F. J. Mackenna, corporation counsel; W. P. Cooke, attorney, Buffalo, Thousand Islands and Portland Railroad Company; and W. L. Marcy, attorney, Erie Railroad Company, appeared before the Board. Mr. Cooke made a statement to the Board. The evidence and statements in this matter are now closed, but the matter is held open and may be determined by the Board at any time. (Grade Crossing Case No. 293.)

The Board adjourned.

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#### OSWEGO, AUGUST 5, 1905.

The Board met pursuant to adjournment. Present, Commissioners Duan, Dickey and Aldridge.

#### *Hearings.*

Petition of the mayor and common council of the city of Oswego, under section 62 of the Railroad Law, as to the closing and discontinuance of the East Fourth street and Schuyler street grade crossings of the railroad operated by the New York Central and Hudson River Railroad Company, and the New York, Ontario and Western Railway in said city and the construction of a new street from East Fourth street to Schuyler street, diverting the travel from the present East Fourth street grade crossing of said railroads and the present Schuyler street grade crossing of said railroads to an undercrossing of said railroads which the petition asks this Board to determine, under section 62 of the Railroad Law, shall be constructed under said railroads at the point where East Seventh street and Schuyler street intersect in said city. John Tiernan, corporation counsel, for the city; George H. Walker for the New York Central and Hudson River Railroad Company; E. Canfield, general superintendent, C. E. Knickerbocker, engineer maintenance of way, and George Marsden, for the New York, Ontario and Western Railway Company; George W. Davis, attorney for property owners on East Fourth street, in opposition to the closing of the East Fourth street grade crossing; L. C. Rowe for the chamber of commerce of the city in favor of the petition; Captain Coulling, U. S. A., appeared in favor of the application, the proposed undercrossing leading to the fort at Oswego. The Board inspected the locality and crossings in question. After hearing evidence and arguments the evidence was closed, but the matter was held open and may be determined by the Board at any time. (Grade Crossing Case No. 527.)

The former petition of the mayor and common council of the city of Oswego as to the crossings named above (Grade Crossing Case No. 507) was closed, the case named above taking its place.

The Board adjourned.

ALBANY, AUGUST 14, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Dickey and Aldridge.

The certificate under section 59 of the Railroad Law which was granted to the Buffalo, Niagara Falls and Rochester Railway Company, July 15, 1901, but which was not issued owing to the company having failed to pay its organization tax, was to-day issued and delivered to John A. Barhite, receiver of the company, there having been filed with the Board a receipt from the State Comptroller and State Treasurer showing that the organization tax of the company had been paid. Accompanying the certificate was a memorandum of the Board in this matter. A copy of this certificate and a copy of this memorandum were sent to the attorneys who appeared in this matter. Mr. Barhite presented to the Board an order of the court in this matter in relation to the certificate being delivered to him as receiver, which paper is filed with the papers in this case. (Case No. 2341.)

#### *Hearings.*

Application of The Lowville and Beaver River Railroad Company for approval of an increase of its capital stock from one hundred and fifty thousand dollars (\$150,000) to two hundred thousand dollars (\$200,000). H. H. Ryel for the applicant. After hearing arguments the hearing was closed. (Case No. 3398.)

Application of the New York Central and Hudson River Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of its station at Cranes Village in the county of Montgomery. George H. Walker for the applicant; Frank L. Hagaman, supervisor of the town, presented a petition in opposition. After hearing evidence and arguments the hearing was closed. (Case No. 3357.)

Application of the Rutland Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of the station of said company at West Lebanon, it being proposed that another station be established and maintained at a point known as Adams crossing. P. M. Meldon for the applicant; Rockefeller & Holsapple for residents of New Lebanon in favor of the application; W. E. Wollard for residents of the town of West Lebanon in opposition to the application; I. W. Fowler made a statement in relation to the distance between stations in this vicinity. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. (Case No. 3367.)

The matter of the application of the Hudson Valley Railway Company (street surface electric), under section 68 of the Railroad Law, as to an extension of time for the continuance of the crossing at grade by its railway of The Delaware and Hudson Company's railroad (steam) in Broadway in the village of Fort Edward, which matter was to have been heard on this date, was not heard, the hearing having been adjourned by consent of attorneys for both companies to a date to be thereafter fixed, the order of this Board, dated July 6, 1905, as to the existence of the temporary grade crossing during the months of July and August, 1905, pending the hearing, is to continue until a determination in this matter by the Board after hearing. (Case No. 2685.)

Petition of the mayor of the city of Schenectady, the New York Central and Hudson River Railroad Company and The Delaware and Hudson Company, under sections 62 and 65 of the Railroad Law, and chapter 376, Laws of 1902, as to change of plan for the abolition of grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in said city, in pursuance of a determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902, the petition asking this Board to determine that the plan for said improvement shall be changed so that Liberty street in said city (to be an undercrossing of said railroads) shall be opened to a width of about forty feet, to be used by teams and pedestrians, instead of (as provided by the plan) to be an undercrossing for pedestrians only. George H. Walker for the New York Central and

Hudson River Railroad Company; Daniel Naylor, city attorney, for the city; J. H. Cane, a property owner, in favor of the petition. After hearing evidence and arguments the evidence was closed, but the matter was held open. (Grade Crossing Case No. 369.)

#### *Orders.*

Application of The Lowville and Beaver River Railroad Company for approval of an increase of its capital stock from one hundred and fifty thousand dollars (\$150,000) to two hundred thousand dollars (\$200,000). Granted. (Case No. 3398.)

Application of the New York Central and Hudson River Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of its station at Cranes Village, in the county of Mont-de to be thereafter fixed. (Case No. 3367.)

A recess was taken until 2 p. m.

#### *AFTER RECESS—2 P. M.*

The Board again met. Present, Commissioners Dunn, Dickey and Aldridge.

#### *Hearings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 2., 1902, as to crossings of the New York Central and Hudson River Railroad and the Buffalo, Rochester and Pittsburgh Railway in the town of Gates, Monroe county. Edward Harris for the New York Central and Hudson River Railroad Company; John S. Rockwell for the Buffalo, Rochester and Pittsburgh Railway Company; and George P. Decker for the town of Gates appeared before the Board in relation to plans for and cost of the work to be done. After hearing arguments the attorneys named agreed upon certain details of the plans, a copy of their agreement being with the papers in this case. Plans for this work signed by the representatives of the companies and the town are to be submitted to this Board for approval. See minutes of August 10, 1904. (Grade Crossing Case No. 330.)

The matter of division, between the Delaware, Lackawanna and Western Railroad Company and the New York Central and Hudson River Railroad Company, of one-half the expense of the construction of an overhead crossing of said railroads in the town of Geddes, Onondaga county, which was to have been heard to-day, was not heard, it having been postponed to a date to be thereafter fixed at the request of counsel for both companies. In this matter a determination dated July 11, 1900, has been made by the Board, the Delaware, Lackawanna and Western Railroad Company asking for a rehearing. (Grade Crossings Case No. 174.)

Application of the village of Lyons Falls, under section 61 of the Railroad Law, for a determination as to whether a continuation of Charlotte street in said village shall cross the Utica and Black River Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. H. W. Bentley for the applicant; George H. Walker for the New York Central and Hudson River Railroad Company in opposition to a crossing at grade. After hearing evidence and arguments the evidence was closed, but the matter was held open. (Grade Crossing Case No. 544.)

Application of the village of Canton, under section 61 of the Railroad Law, for a determination as to whether a new street in said village, to be known as Pleasant street, connecting Main and Judson streets, shall cross the Rome, Watertown and Ogdensburg Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. John R. Keeler for the applicant; George H. Walker for the New York Central and Hudson River Railroad Company in opposition to a crossing at grade. After hearing evidence and arguments the evidence was closed, but the matter was held open. (Grade crossing Case No. 540.)



*Reports.*

Report of the inspector, dated July 26, 1905, of his inspection of the Lake Shore and Michigan Southern Railway. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 16—1905.)

Report of the inspector, dated July 27, 1905, of his inspection of the Dansville and Mount Morris Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 17—1905.)

Report of the inspector, dated July 27, 1905, of his inspection of the Kanona and Prattsburgh Railway. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 18—1905.)

Report of the inspector, dated July 28, 1905, of his inspection of the Genesee and Wyoming Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 19—1905.)

Report of the inspector, dated July 29, 1905, of his inspection of the New York and Pennsylvania Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 20—1905.)

Report of the inspector, dated July 31, 1905, of his inspection of the Buffalo and Susquehanna Railroad. Ordered copy sent company with a letter of recommendation as shown by office original letter on file. (No. 21—1905.)

*Crossings.*

In the matter of the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hartsdale avenue grade crossing of the New York and Harlem Railroad, its lessor, in the town of Scarsdale, Westchester county, the construction of an overhead crossing of said railroad about 300 feet south of the present grade crossing at Hartsdale avenue, the construction of new pieces of highway to said proposed overhead crossing, and the construction of a foot bridge at the location of the present said Hartsdale avenue grade crossing, in which matter a hearing was held by this Board at Scarsdale on August 2, 1905, an amended petition was received from the New York Central and Hudson River Railroad Company, the amended petition stating that the changes proposed both the towns of Scarsdale and Greenburg, Westchester county, are involved. Ordered carried on file. (Grade Crossing Case No. 552.)

*Orders.*

Application of the Albany and Susquehanna Railroad Company for consent to the issuance of a first mortgage for ten million dollars (\$10,000,000). Granted. (Case No. 3352.)

Petition of the mayor and common council of the city of Oswego, under section 62 of the Railroad Law, as to the closing and discontinuance of the East Fourth street and Schuyler street grade crossings of the railroad operated by the New York Central and Hudson River Railroad Company, and the New York, Ontario and Western Railway in said city, and the construction of a new street from East Fourth street to Schuyler street, diverting the travel from the present East Fourth street grade crossing of said railroads and the present Schuyler street grade crossing of said railroads to an undercrossing of said railroads, which the petition asks this Board to determine, under section 62 of the Railroad Law, shall be constructed under said railroads at the point where East Seventh street and Schuyler street intersect in said city. Determination, as shown by office original determination on file, that the said grade crossings of said railroads shall be closed, a new street constructed from East Fourth street to Schuyler street and an undercrossing of said railroads be constructed where East Seventh street and Schuyler street intersect in said city. (Grade Crossing Case No. 527.)

Petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of two highway grade crossings of its railway at its Stony Ford station in the town of Wallkill, Orange county, and the construction of new pieces of highway and an overhead bridge crossing of said railway to be located between the two existing grade crossings. Determination and plans and estimate approved, as shown by office original determination on file, that the two said crossings shall be closed and discontinued, new pieces of highway constructed and an overhead bridge crossing of said railway constructed to be located between the two existing grade crossings. (Grade Crossing Case No. 442.)

Petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of three grade crossings of its railway near its Crystal Run station in the town of Wallkill, Orange county, the construction of new pieces of highway and one overhead bridge crossing of said railway. Determination and plan approved, as shown by office original determination on file, that said three grade crossings shall be closed and discontinued, new pieces of highway constructed and one overhead bridge crossing of said railway constructed. (Grade Crossing Case No. 459.)

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

C. R. Barnes (expenses).....	\$90 00
J. D. Shultz (expenses, June, \$81.25; July, \$35.10) ..	116 35
Karl F. Colson (expenses).....	33 00
Wm. McNeilly (expenses).....	5 50
Postal Telegraph-Cable Co.....	3 88
Western Union Telegraph Co. (June, \$2.51; July, \$4.73) ..	7 24
National Express Co.....	47 41
American Express Co.....	34 22
Great Bear Spring Co. (June, \$3; July, \$3.30).....	6 30
Simpson & Murdock Company.....	15 00
Street Railway Journal.....	2 50
Philip J. Henzel .....	30 00
Matthew Bender & Co.....	13 00
Brandow Printing Company.....	269 46
J. B. Lyon Company.....	1 50
The Smith-Premier Typewriter Co.....	33 87
"Klips," E. C. Cuyler, Secretary-Treasurer (July) ..	25 00
Thomas J. Cowell.....	5 25
Prospect House (Niagara Falls, N. Y.).....	6 00
Hudson River Telephone Co. (May, \$24.92; June, \$48.19; July, \$27.52).....	100 63
New York office:	
John J. Farley (expenses).....	16 00
Battery Place Realty Co. (August rent).....	150 00
New York Telephone Co. (June 1, July 1, \$11.28; August 1, \$14).....	25 28
George A. Traver, superintendent (June, \$2.60; July, \$2.60) .....	5 20

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\$1,042.59

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#### *Grade Crossing Expenses.*

A. H. Sutermeister (expenses).....	\$32 75
James E. Brazee (expenses).....	50 51

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\$83 26

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*Grade Crossings—Construction Account.*

Town of Kinderhook, Columbia county, for the State's proportion of the cost of legal expenses in a suit in the courts brought by Albert T. Smith, as trustee, for damages in the matter of Chatham street crossing of Boston and Albany Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at Niverville, in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated June 13, 1900.

\$252 26

The Board adjourned.

NEW YORK, AUGUST 15, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Adjourned hearing in the matter of the application of the Bronx, Yonkers and White Plains Railway Company (street surface) for a certificate under section 59 of the Railroad Law. A. S. Gilbert for the applicant; C. C. Paulding for the New York Central and Hudson River Railroad Company in opposition; Mills & Johnson (Mr. Johnson appearing) for the Yonkers Railroad Company. After hearing evidence and arguments the hearing was adjourned until Tuesday, August 29, 1905, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3319.)

Adjourned hearing in the matter of the petition of the mayor and common council of the city of Niagara Falls, under section 62 of the Railroad Law, as to changing the Niagara street grade crossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company in said city to an undercrossing. F. J. Mackenna, corporation counsel, for the petitioner; W. P. Cooke for the Buffalo, Thousand Islands and Portland Railroad Company; W. L. Marcy for the Erie Railroad Company; King, Leggett & Brown (Mr. King appearing) for the Electric City Railway Company; Augustus Thibaudeau for Charles H. Terwilliger, a property owner. After hearing evidence and arguments the evidence was closed, but the matter was held open. Representatives of the Erie Railroad Company and the Buffalo, Thousand Islands and Portland Railroad Company and the city are to confer as to the plan. (Grade Crossing Case No. 501.)

Adjourned hearing in the matter of the application of The Electric City Railway Company, under section 68 of the Railroad Law, as to its railway crossing on Niagara street, Niagara Falls, the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company, the applicant company asking that it may be permitted temporarily to make this crossing at grade. King, Leggett & Brown (Mr. King appearing) for the applicant; W. L. Marcy for the Erie Railroad Company; W. P. Cooke for the Buffalo, Thousand Islands and Portland Railroad Company. After hearing arguments the hearing was closed. (Case No. 3380.)

The Board appointed John S. Kennedy its Secretary, he to assume the duties of said position not later than September 1 next. Mr. Kennedy was present and was so informed.

The Board adjourned.

NEW YORK, AUGUST 16, 1905.

The Board met pursuant to adjournment. Present, Commissioners Baker, Dickey and Aldridge.

*Hearings.*

Petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street grade crossing of its railroad in the village of Irvington and the construction of new pieces of street leading therefrom to an overhead crossing of said railroad proposed to be constructed about four hundred feet north of the present grade crossing at Main street. C. C. Paulding for the petitioner; Cyrus A. Bishop for the village and for property owners in opposition; Lincoln McCormack for C. H. Matthiessen, a property owner, in opposition; H. W. Wier for Eliza Hunter, a property owner; H. C. Griffin for the Burnham-Hitchings-Pierson Company, property owners, in opposition; Harcourt Bull for the J. C. Turner Cypress Lumber Company in opposition (Mr. Bull was not present). After hearing evidence and arguments the evidence was closed, but the matter was held open. Mr Paulding is to file with the Board an estimate of the cost of an undercrossing at Main street for vehicles and pedestrians. Briefs are to be filed within thirty days from this date. (Grade Crossing Case No. 536.)

Application of the New York City Inter-Borough Railway Company (street surface electric), under section 68 of the Railroad Law, for a determination as to how its railway shall cross the New York and Harlem Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) in 180th street, Borough of the Bronx, New York city, it being proposed that said street surface railway shall cross said steam railroad on an existing bridge which carries 180th street across said steam railroad. Strong & Cadwalader (Mr. Gale appearing) for the applicant; C. C. Paulding for the New York Central and Hudson River and the New York and Harlem Railroad Companies in opposition. After hearing arguments the hearing was adjourned until Tuesday, August 29, 10 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city, the companies in the meantime to try to reach an agreement as to the cost of maintenance of the bridge. (Case No. 3399.)

The Board adjourned.

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WAVERLY, AUGUST 22, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Ajourned hearing in the matter of the application of the Chemung Valley Traction Company for a certificate under section 59 of the Railroad Law. Boyd McDowell and Theodore R. Tuthill for the applicant; Richard H. Thurston, city attorney of Elmira, for said city in favor of the application; F. L. Howard, attorney for J. T. Tucker, president of the village of Waverly and for the highway commissioners of the town of Barton, Tioga county, for said village president and said highway commissioners in favor of the application; Seymour Lowmann, attorney for the trustees of the village of Wellsburg, Chemung county, highway commissioners of the town of Southport, Chemung county, highway commissioners of the town of Ashland, Chemung county, and the highway commissioners of the town of Chemung, Chemung county, for said village and towns in favor of the application; John B. Stanchfield for the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company; Thomas O'Connor for the Elmira and Waverly Railway Company in opposition; A. C. Wade for the Waverly, Sayre and Athens Traction Company in opposition. After hearing evidence and arguments the evidence was closed. (Case No. 3323.)

The new application of the Elmira and Waverly Railway Company for a certificate under section 59 of the Railroad Law was called, the new application having been filed with this Board on August 10, 1905. (See minutes of May 16 and June 13, 1905.) Thomas O'Connor, attorney for the applicant, stated to the Board that under a decision of the Appellate Division, Second

Department, in the Intervale Traction Company, section 59 of the Railroad Law, certiorari matter, the articles of association of the Elmira and Waverly Railway Company were void, inasmuch as one of the incorporators took the acknowledgements of other of the incorporators, and therefore this applicant could not proceed with its case. He stated to the Board that the interests he represents are to incorporate a new company, and the Board notified him that if proper application, under section 59 of the Railroad Law, was received from this company in sufficient time, it would give a hearing on said application in the city of Elmira on Tuesday, September 26, 1905, at 10 a. m. (Case No. 3372.)

The Board inspected portions of the proposed route of the Elmira and Waverly Railway Company and the existing route of the Waverly, Sayre and Athens Traction Company.

The Board adjourned.

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#### ALBANY, AUGUST 24, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

The minutes of the meetings of July 6, 13, 15, 18, 19, 20, 26 and 28 and August 1, 2, 3, 4, 5, 14, 15, 16 and 22 were read and approved.

#### *Complaints.*

Bert Bradley against the Rutland Railroad Company as to condition of its fences along his farm near Old Chatham. Letter dated July 24, 1905, received from complainant stating that the fence had been constructed; letter dated August 8, 1905, received from the company to the same effect. Ordered filed. This case was closed on the minutes of July 6, 1905, and has not been reopened. (Case No. 3362.)

C. N. Pease and others of Stephentown against the Rutland Railroad Company as to lack of fences of said company along complainant's lands. Copy sent company. (Case No. 3397.)

Warner J. Walker of Cobleskill against The Delaware and Hudson Company as to a switch track of said company's railroad crossing a public highway in the town of Cobleskill. Copy sent company. Answer of company received. Copy sent complainant. Closed. (Case No. 3384.)

West Side Taxpayers' Association of New York city against the New York Central and Hudson River Railroad Company as to the operation of freight trains of said company on Eleventh avenue between 30th and 60th streets, New York city. Report dated August 1, 1905, received from the inspector of grade crossings to the effect that the recommendations of this Board in this matter have been complied with. Ordered filed. This case was closed on the minutes of May 31, 1905, and has not been reopened. (Case No. 3322.)

John Head of Boston Corners against the Poughkeepsie and Eastern Railway Company as to the condition of its fence along his land. Letter dated July 26, 1905, received from the company stating that the work of constructing the fence was under way. The complainant was so notified. This case was closed July 6, 1905, and not reopened. (Case No. 3356.)

W. L. Ford, clerk, village of Pittsford, against the New York Central and Hudson River Railroad Company as to non-operation of an electric crossing bell at the Monroe avenue crossing of the West Shore Railroad (lessor) in the village of Pittsford. Copy sent company. Answer of company received stating that this bell has been placed in service. Copy sent complainant. Closed. (Case No. 3386.)

Residents of Sherman Park against the New York Central and Hudson River Railroad Company asking that a passenger station be established by said company at Sherman Park on its New York and Harlem division. Copy sent company. (Case No. 3393.)

Joseph M. Wilcox of Hoosick Falls, N. Y., against the Rutland Railroad Company as to fence of that company along complainant's farm. Copy sent company. (Case No. 3392.)

F. W. Gardner of Hoosick Falls, N. Y., against the Boston and Maine Railroad as to weeds on its right of way along his farm at Petersburg Junction. Answer of company received stating that the weeds had been cut. Copy sent complainant. Closed. (Case No. 3381.)

B. W. Dinsmore against the New York City Railway Company complaining of noise made by cars of that company on Amsterdam avenue. Answer of company received. Copy sent complainant. Reply of complainant to answer of company received. A report in this matter dated July 31, 1905, was received from the electrical expert. Ordered copy of report sent company, with a letter as shown by office original letter on file. (Case No. 3377.)

Homer W. Case of Clinton Corners against the Poughkeepsie and Eastern Railway Company in relation to farm crossing on his farm, fences, cattle-guards, etc. Letter dated July 14, 1905, received from the company stating that new fence, gates and crossing have been constructed. The complainant was notified to this effect. This case was closed on the minutes of July 6, 1905, and has not been reopened. (Case No. 3344.)

George W. Jump & Company of Brooklyn against the Central New England Railway Company in relation to charges for car service. Letter dated July 17, 1905, received from the Poughkeepsie and Eastern Railway Company, which is involved. Closed. (Case No. 3336.)

S. W. Turner against the Interborough Rapid Transit Company (Manhattan Railway Division) as to the 116th street and Eighth avenue station of the Manhattan Railway. Report dated July 31, 1905, received from the electrical expert. Ordered copy sent company, with a letter as shown by copy on file. (Case No. 3275.)

W. R. Jenks of Old Chatham against the Rutland Railroad Company as to the condition of fences of said company along his farm. Copy sent company. Answer of company received stating that the fences will be given attention. Copy sent complainant. (Case No. 3383.)

Verbal complaint of Charles E. Nichols, shipper at Carmel, against the New York Central and Hudson River Railroad Company as to freight rates on shipment of live stock from Carmel to Yorktown on the New York and Putnam division to New York city. Closed. (Case No. 3273.)

William M. MacMahon, New Utrecht Avenue Property Owners' Association and Borough Park and Blythebourne Protective Association against the Brooklyn Heights Railroad Company as to running of express trains through New Utrecht avenue, Brooklyn, which trains do not stop at 58th street. Letter dated August 23, 1905, received from Lewis J. Doolittle, secretary, the Borough Park and Blythebourne Protective Association. Reports in this matter dated August 11 and 15, 1905, by the electrical expert were submitted to the Board. Ordered letter written Mr. Doolittle, as shown by office original letter on file, enclosing copy of report of electrical expert dated August 15, 1905; also ordered letter written company in relation to speed of trains through New Utrecht avenue. (Case No. 3338.)

Arnold Schramm against the Brooklyn Heights Railroad Company in relation to service rendered the public from the 39th street ferry, Brooklyn, to Bensonhurst. Copy sent company. Answer of company received stating that additional cars would be run. Copy sent complainant. Letter dated August 14, 1905, received from complainant. Report dated July 31, 1905, received from electrical expert. Ordered copy of report sent company, with a letter of recommendation as shown by office original letter on file. (Case No. 3389.)

J. W. Simpson, Middletown, against the Pochuck Railroad Company as to a highway crossing of its railroad and as to passenger train service on its railroad. Answer of company received. Copy sent complainant. Reply of complainant received. Closed. (Case No. 3371.)

J. H. Waterford against the Buffalo Southern Railroad Company as to operation of cars. Copy sent company. Answer of company received. Copy sent complainant. The electrical expert has been instructed to make a report in this matter. (Case No. 3391.)

Edwin A. Bedell of Albany against the Albany and Hudson Railroad Company as to service rendered the public. Copy sent company. (Case No. 3402.)

D. J. Bienenstock of Brooklyn against the Brooklyn Heights Railroad Company as to overcrowding of cars on its Rockaway avenue lines. Answer of

company received. Copy sent complainant. Report dated July 31, 1906, received from the electrical expert stating that increased number of trips were being run on this line. Ordered copy of electrical expert's report sent complainant, and case closed. (Case No. 3369.)

J. Walz against the Brooklyn Heights Railroad Company as to passenger fare charged. Copy sent company. Answer of company received. Copy sent complainant. Closed. (Case No. 3385.)

O. Robertson against the Brooklyn Heights Railroad Company in the matter of gates at crossing of its railroad at 39th street and New Utrecht avenue, Brooklyn. Letters dated July 22 and 25, 1905, received from complainant, and answered by letters from this Board dated July 25 and 27, 1905. This matter was closed on the minutes of July 18, 1904, and has not been reopened, the Board not proceeding further in the matter. (Case No. 3169.)

Taxpayers' Non-Partisan Association of the Third Ward, Borough of Queens, New York city, against the New York and Queens County Railway Company as to service rendered the public at College Point. Report dated July 31, 1905, received from the electrical expert. Ordered copy sent complainants. (Case No. 3365.)

Theodore M. Roberson (by A. S. Embler) against the Erie Railroad Company as to said company not cutting the weeds on its right of way in the town of Crawford, Orange county. Copy sent company. Answer of company received stating that the cause of the complaint would be removed. Closed. This case was closed on the minutes of November 2, 1904, and is reopened and closed on this date. (Case No. 3209.)

W. H. Price against the Brooklyn Heights Railroad Company as to alleged removal of station of the Brighton Beach line of said company's railroad from Avenue C to Avenue D. Copy sent company. The electrical expert has been instructed to make a report in this matter. (Case No. 3407.)

F. E. Rosenberg, of North Petersburg, against the Rutland Railroad Company as to fences of that company along his land. Copy sent company. Answer of company received. Copy sent complainant. (Case No. 3408.)

H. T. Love against the Catskill Mountain Railway Company in relation to alleged dangerous operation of passenger trains. Copy sent company. Answer of company received. Copy sent complainant. Reply of complainant received. Closed. (Case No. 3403.)

#### *Applications.*

Petition of the New York Central and Hudson River Railroad Company, under section 50 of the Railroad Law, as to approval by this Board of some other safeguard or device in place of warning signals at overhead structures now in use on said railroad between Mott Haven and Croton on the Hudson River division, and between Grand Central Station and North White Plains on the New York and Harlem division. Ordered carried on file. (Case No. 3390.)

#### *Crossings.*

In the matter of the petition of the town board of the town of Deer Park, Orange county, as to the Caskey's grade crossing of the Erie Railroad in said town, a report as to a conference on July 20, 1905, between representatives of the company and the town and Commissioner Baker, was made by Commissioner Baker. Ordered filed. (Grade Crossing Case No. 464.)

#### *Orders.*

Petition of the city of Niagara Falls, under section 62 of the Railroad Law, as to changing the Pine street grade crossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company to an overcrossing. Determination as shown by office original determination on file, that the crossing shall be changed to an overcrossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company. (Grade Crossing Case No. 293.)

Petition of the town board of the town of Deer Park, Orange county, under section 62 of the Railroad Law, as to the Caskey's grade crossing of the Erie Railroad at Sparrowbush in said town. Determination, as shown by office original determination on file, that new pieces of highway and undercrossing of said railroad near the Caskey's grade crossing be constructed. (Grade Crossing Case No. 464.)

Petition of the mayor and common council of the city of Niagara Falls, under section 62 of the Railroad Law, as to changing the Niagara street grade crossing of the Erie Railroad and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company in said city to an undercrossing. Determination, as shown by office original determination on file, that the said grade crossing of the Erie Railroad shall be changed to an undercrossing irrespective of the right of way of the Buffalo, Thousand Islands and Portland Railroad Company. (Grade Crossing Case No. 501.)

Petition of the mayor of the city of Schenectady, the New York Central and Hudson River Railroad Company and The Delaware and Hudson Company, under sections 62 and 65 of the Railroad Law, and chapter 376 of the Laws of 1902, as to change of plan for the abolition of grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in said city, in pursuance of a determination of this Board, under section 62 of the Railroad Law, and chapter 376 of the Laws of 1902, dated October 9, 1902. Ordered that the Board approve the change of plan for the undercrossing at Liberty street so that it shall be an undercrossing for teams and pedestrians instead of for pedestrians only, as shown by office original order to which is attached a white print plan of the changed plan. (Grade Crossing Case No. 369.)

The Board took a recess until 7:30 p. m.

#### AFTER RECESS—7:30 P. M.

Present, Commissioners Dunn, Baker, Dickey and Aldridge.

#### *Complaints.*

In the matter of the recommendations of this Board to the Brooklyn Heights Railroad Company, dated February 9, 1905, as to service rendered the public, a letter dated August 1, 1905, was received from A. Davison in relation to number of cars of said company operated in trains on its Brighton Beach division after 9 a. m. Copy sent company. Answer of company received. Copy sent complainant. A report dated August 11, 1905, was received from the electrical expert in this matter. Ordered copy sent complainant, and the matter closed. (Case No. 3296.)

#### *Applications.*

The matter of the application of the Ithaca-Cortland Traction Company, under section 68 of the Railroad Law, as to crossing the Lehigh Valley Railroad at four points, in which plans were to be filed, was closed, no plans having been received. This matter may be reopened at any time on application by the applicant. (Case No. 3294.)

Application of the Rochester, Syracuse and Eastern Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (double track, street surface) shall cross the New York Central and Hudson River Railroad (steam) and the West Shore Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at four crossings, viz.:

1. The Auburn branch of the New York Central and Hudson River Railroad near Brighton station (it being proposed that the railroad of the applicant shall cross the steam railroad at this point above the grade of the steam railroad);

2. The West Shore Railroad at a point about one and one-half miles west of Fairport (it being proposed that the railroad of the applicant shall cross the steam railroad at this point below the grade of the steam railroad);



3. The New York Central and Hudson River Railroad and the West Shore Railroad (one crossing) at a point about half way between the villages of Newark and Lyons (it being proposed that the railroad of the applicant shall cross the steam railroads at this point above the grade of the steam railroads); and asking this Board to fix the proportion of expense of such crossings which shall be paid by each railroad company. Ordered hearing set for Tuesday, September 5, 1905, 2:30 p. m., at the office of the Board in Albany. (Case No. 3404.)

Application of the Auburn and Syracuse Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track, street surface) shall cross the Lehigh Valley Railroad (steam, three tracks) at West Genesee street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. Ordered hearing set for Tuesday, September 5, 1905, 2:30 p. m., at the office of the Board in Albany. (Case No. 3405.)

Application of the Auburn and Northern Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track, street surface) shall cross the Lehigh Valley Railroad (steam, single track) at State street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. Ordered hearing set for Tuesday, September 5, 1905, 2:30 p. m., at the office of the Board in Albany. (Case No. 3406.)

Application (second application) of the Cooperstown and Mohawk Valley Railway Company (steam) for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, September 5, 1905, 3 p. m., at the office of the Board in Albany. In this matter a certificate under section 59 of the Railroad Law, dated August 21, 1901, has been issued to the company, this application being made because the company did not file its articles of association in the clerk's office of Otsego county. (Case No. 2500.)

Application (reapplication) of the Buffalo Frontier Terminal Railroad Company (steam) for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, October 3, 1905, 10:30 a. m., at the Iroquois Hotel in the city of Buffalo. The application to this Board for such a certificate was refused August 10, 1904. This application is a reapplication under the statute. (Case No. 3082.)

Application of the Ticonderoga Union Terminal Railroad Company (street surface) for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, September 5, 1905, 4 p. m., at the office of the Board in Albany. (Case No. 3395.)

Letters and correspondence in the matter of appointment of Secretary of the Board were submitted to the Board. Ordered filed.

Letters and correspondence in the matter of employment of a locomotive boiler inspector, under chapter 611 of the Laws of 1905, were submitted to the Board. Ordered filed.

Correspondence in the matter of failure of the following railroad companies to make quarterly reports for the quarters stated, which matter has been referred to the Attorney-General, was submitted to the Board:

The Jamestown Street Railway Company, quarters ending December 31, 1904, and March 31, 1905; The Chautauqua Traction Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905; The Waverly, Sayre and Athens Traction Company, quarters ending December 31, 1904, and March 31, 1905; City Island Railroad Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905; Pelham Park Railroad Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905; Syracuse and Suburban Railroad Company, quarters ending September 30, 1903, December 31, 1904, and March 31, 1905; Schoharie Valley Railway Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905. Ordered filed. A number of these reports have been received. (Case No. 3388.)

The new application of the Elmira and Waverly Railway Company for a certificate under section 59 of the Railroad Law was dismissed. See minutes of August 22, 1905. (Case No. 3372.)

### *Reports.*

In the matter of the recommendations of this Board, dated April 27, 1905, as to the construction of derailing switches in the Wallkill Transit Company's railroad (street surface electric) on each side of the Erie Railroad (steam) at a point where said railroads cross at grade in North street, Middletown, which matter has been referred to the Attorney-General for his consideration and action (see minutes of July 6, 1905), a letter dated July 20, 1905, was received from the Wallkill Transit Company. Ordered letter written said company as shown by copy on file. (Case No. 3340.)

In the matter of the recommendations of this Board to the New York Central and Hudson River Railroad Company and the New York, New Haven and Hartford Railroad Company, dated January 27, 1902, as to the burning of soft coal on locomotive engines of said companies in the Fourth avenue tunnel, New York city, a letter dated July 13, 1905, was received from John R. Myer as to the burning of soft coal on locomotive engines of the New York, New Haven and Hartford Railroad Company. A letter dated July 14, 1905, was sent to said company and reply dated July 26, 1905, received. Copy of reply sent Mr. Myer. The matter of Mr. Myer's letter was closed. (Schultz Case No. 3—1902.)

In the matter of the determination of this Board, dated May 29, 1902, under section 68 of the Railroad Law, as to the Cortland County Traction Company's railroad crossing the Syracuse, Binghamton and New York Railroad on Elm street, Cortland, a report dated August 9, 1905, was received from the electrical expert as to this crossing, the report being also in relation to other crossings by the Cortland County Traction Company's railroad,—one of the Lehigh Valley Railroad and the other of the Delaware, Lackawanna and Western Railroad. Ordered letter written company as shown by copy on file. (Case No. 2677.)

In the matter of the complaint of Arthur C. Ferguson against the Troy and New England Railway Company as to the physical condition of said company's railway, a report dated August 24, 1905, was received from the superintendent of the grade crossing bureau stating that the company is rebuilding its structures. Ordered filed. (Case No. 2886.)

In the matter of the recommendations of this Board to the Ogdensburg Street Railway Company as to the physical condition of its railway a report, dated August 9, 1905, was received from the electrical expert. Ordered copy sent company with a letter as shown by copy on file. (Case No. 2795.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, dated June 20, 1905, as to the Long Island Electric Railway crossing at grade the Long Island Railroad at a point in the Jamaica and Hempstead Turnpike east (west) of Queens, borough of Queens, New York city, a report dated August 11, 1905, was received from the electrical expert. Ordered filed. (Case No. 3303.)

In the matter of the recommendations of this Board to the Union Railway Company, dated June 21, 1905, in the complaint of the Property Owners' Association of the Twenty-third Ward, borough of the Bronx, New York city, and other associations against said company, a report dated August 1, 1905, was received from the inspector of grade crossings as to compliance with the recommendations. Ordered filed. (Case No. 3259.)

Reports of inspections of locomotive boilers were submitted to the Board Ordered filed. (Case No. 3382.)

Report of the electrical expert, dated July 31, 1905, as to the substitution of a steel guardrail for a wooden guardrail on the Niagara Gorge Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (Case No. 2279.)

In the matter of report from the superintendent of the grade crossing bureau as to lack of guard wire above the trolley wire of the Kingston Com-

solidated Railroad from the Strand to the car barn on Broadway and from the car barn to the West Shore Railroad in the city of Kingston, letters dated August 8 and 10, 1905, were received from the company. Ordered letter written company as shown by copy on file. Closed. (Case No. 3343.)

Report of the electrical expert dated August 16, 1905, in relation to protection of third rail-electric on the Long Island Railroad (J. E. Brackenridge, Commissioner of Public Works, Borough of Brooklyn, against the Long Island Railroad Company). Ordered copy sent company, with letter of recommendation as shown by office original letter on file. (Case No. 3320.)

Report of the electrical expert dated August 11, 1905, as to a rear collision between cars of the Coney Island and Brooklyn Railroad Company, August 2, 1905, on Coney Island avenue, Brooklyn. Ordered copy sent company. (Street Case No. 18—1905.)

Report of the electrical expert dated July 31, 1905, as to the derailment of a train on the Second avenue line of the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company), July 2, 1905, at 128th street and Second avenue. Ordered copy sent company. (Street Case No. 16—1905.)

Report of the Inspector dated July 25, 1905, as to a collision between a passenger train and switching locomotive on the Lake Shore and Michigan Southern Railway in the Buffalo yard, May 17, 1905. Ordered copy sent company. (Steam Case No. 22—1905.)

Report of the electrical expert dated July 31, 1905, as to derailment of a car on the Buffalo and Depew Railway in the village of Depew, July 2, 1905. Ordered copy sent company. (Street Case No. 17—1905.)

Report of the electrical expert dated July 31, 1905, as to a collision between trains on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company) south of the 133d street station, Third avenue line, May 7, 1905. Ordered copy sent company. (Street Case No. 8—1905.)

Report of the superintendent of the grade crossing bureau dated July 8, 1905, as to a collision between trains of the Albany and Hudson Railroad Company near Schodack Center, June 13, 1905. Ordered copy sent company. (Steam Case No. 23—1905.)

Report of the electrical expert dated July 31, 1905, as to the derailment of a car on the Staten Island Midland Railroad, on the Richmond road, June 28, 1905. Ordered copy sent company. (Street Case No. 14—1905.)

Report of the electrical expert dated July 31, 1905, as to a rear collision between trains on the Third avenue line of the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company) near 133d street, May 22, 1905. Ordered copy sent company. (Street Case No. 10—1905.)

Report of the electrical expert dated August 15, 1905, as to a rear collision between cars of the Coney Island and Brooklyn Railroad Company on Coney Island avenue, near Coney Island creek, August 9, 1905. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (Street Case No. 20—1905.)

Report of the inspector, dated August 7, 1905, of his inspection of the Pennsylvania division of the New York Central and Hudson River Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 22—1905.)

Report of the inspector, dated July 1, 1905, of his inspection of the portion of the Boston and Maine Railroad in this State. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 8—1905.)

Report of the inspector, dated August 10, 1905, of his inspection of the Norwood and St. Lawrence Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 23—1905.)

Report of the inspector dated July 1, 1905, of his inspection of the Catskill Mountain Railway. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 12—1905.)

Report of the inspector, dated June 30, 1905, of his inspection of the Ulster and Delaware Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 9—1905.)

Report of the inspector, dated July 1, 1905, of his inspection of the Catskill and Tannersville Railway. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 10—1905.)

Report of the inspector, dated July 1, 1905, of his inspection of the Otis Railway. Ordered letter written inspector as shown by copy on file. (No. 11—1905.)

Report of the inspector, dated July 7, 1905, of his inspection of the Glenfield and Western Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 13—1905.)

Report of the inspector, dated July 7, 1905, of his inspection of the Little Falls and Dolgeville Railroad. Ordered letter written inspector as shown by copy on file. (No. 14—1905.)

In the matter of the recommendations of this Board contained in a letter dated July 18, 1905, to the Middleburg and Schoharie Railroad Company as to the physical condition of its railroad, a letter dated July 22, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 4—1905.)

In the matter of the recommendations of this Board contained in a letter dated July 18, 1905, to the Greenwich and Johnsonville Railway Company as to the physical condition of its railroad, a letter dated July 31, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 7—1905.)

In the matter of the recommendations of this Board contained in a letter dated July 18, 1905, to the Fonda, Johnstown and Gloversville Railroad Company as to the physical condition of its railroad, a letter dated July 19, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 6—1905.)

In the matter of the recommendations of this Board contained in a letter dated July 15, 1905, to the Buffalo, Attica and Arcade Railroad Company, a letter dated July 19, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 15—1905.)

In the matter of the recommendations of this Board contained in a letter dated July 18, 1905, to the Staten Island Rapid Transit Railway Company as to the physical condition of its railway and the Staten Island Railway, a letter dated August 2, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 5—1905.)

#### *Crossings.*

Petition of the Central New England Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a highway grade crossing of its railroad in the village of Pleasant Valley, Dutchess county, the travel to be diverted to an existing grade crossing of its railroad nearby. Ordered carried on file. (Grade Crossing Case No. 557.)

Petition of the New York, New Haven and Hartford Railroad Company, under section 62 of the Railroad Law, as to changing from grade a highway crossing of its railroad in the town of South East, Putnam county, known as "first grade crossing west of bridge over Croton river at Brewster," to an undercrossing. Ordered carried on file. (Grade Crossing Case No. 556.)

The matter of the petition of the mayor and common council of the city of Mount Vernon, under section 62 of the Railroad Law, as to changing the Mount Vernon avenue and Oak street grade crossings of the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) from grade to overcrossings was closed, there being a new petition in relation to these and other crossings in and near Mount Vernon (Grade Crossing Case No. 545) pending before the Board. (Grade Crossing Case No. 282.)

Application of the town board of the town of Hunter, Greene county, under section 61 of the Railroad Law, for a determination as to whether an extension of a highway in said town shall cross the Ulster and Delaware Railroad over, under or at the grade of said railroad. Ordered hearing set for Tuesday, September 5, 1905, 3 p. m., at the office of the Board in Albany. (Grade Crossing Case No. 555.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 2, 1902, as to changing the Priors road or Manhasset and Old Westbury road grade crossing of the Long Island Railroad in the town of North Hempstead, Nassau county, to an undercrossing, a letter dated August 3, 1905, was received from the company asking the authorization of this Board for the acquirement of land from Stephen T. Rushmore at a cost of one thousand two hundred dollars (\$1,200) to enable the cut to take the natural slope, the letter stating that the town of North Hempstead has arranged with Mr. Rushmore for his property at said price; the letter of the company also asks the authorization of the Board to the construction of a retaining wall along a sufficient portion of the frontage of the Nassau Light and Power Company to retain the slopes within the street lines, the cost to be about two thousand five hundred dollars (\$2,500); the letter also asks the authorization of the Board for the expenditure of about five hundred dollars (\$500) for work of regrading. The letter states that the town of North Hempstead and the company are prepared to pay their proportions. A report dated August 10, 1905, on these propositions was received from the superintendent of the grade crossing bureau. Ordered that said propositions be approved by this Board, the total additional cost of this work involved being about four thousand two hundred dollars (\$4,200). (Grade Crossing Case No. 312.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the Ionia and East Bloomfield road grade crossing of the New York Central and Hudson River Railroad in the town of West Bloomfield, Ontario county, and the construction of new pieces of highway and an undercrossing of said railroad, a report dated August 16, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 396.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 19, 1904, and modified determination dated September 29, 1904, as to the construction of a subway for pedestrians under the New York Central and Hudson River Railroad in Main street, Herkimer, a report dated August 16, 1904, was received from the superintendent of the grade crossing bureau. Ordered filed. (Grade Crossing Case No. 498.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, reports dated July 27 and August 18, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 390.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, reports dated July 27 and August 18, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 8, 1904, as to the closing and discontinuance of the Van Anden street grade crossing of the New York Central and Hudson River Railroad in the city of Auburn, and the construction of new pieces of street, a report dated August 24, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 470.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 9, 1904, as to the closing and discontinuance of the Newburgh and Campbell Hall road highway crossing of the New York, Ontario and Western Railway and the construction of new pieces of highway and an overcrossing of said railway, a report dated August 24, 1905, was

received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 488.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing, a report dated August 16, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 416.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, as to changing the Broadway grade crossing of the New York and Putnam division of the New York Central and Hudson River Railroad at Van Cortlandt station, New York city, to an undercrossing, a report dated August 24, 1905, was received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 503.)

#### *Orders.*

Petition of the New York Central and Hudson River Railroad Company, under section 68 of the Railroad Law, as to a switch track of its New York and Putnam division in Yonkers crossing the Union Railway (Yonkers Railroad—street surface electric) in Lake avenue. Determination, as shown by office original determination on file, that said switch track shall cross at grade the Yonkers Railroad in Lake avenue, Yonkers. (Grade Crossing Case No. 542.)

Application of the village of Canton, under section 61 of the Railroad Law, for a determination as to whether a new street in said village, to be known as Pleasant street, shall cross the Rome, Watertown and Ogdensburg Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. Determination, as shown by office original determination on file, that said new street shall cross said railroad over the grade of the railroad. (Grade Crossing Case No. 540.)

The Board adjourned.

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#### NEW YORK, AUGUST 29, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

#### *Hearings.*

Application of the Glen Cove Railroad Company (street surface) for a certificate under section 59 of the Railroad Law. J. F. Keany for the applicant; Edward M. Underhill, highway commissioner, town of Oyster Bay, in favor of the application; James H. Cox, justice of the peace, town of Oyster Bay, in favor of the application; D. M. Munger, a property owner, in favor of the application; Joseph Roll in favor of the application. After hearing evidence and arguments the hearing was closed. (Case No. 3378.)

Adjourned hearing in the matter of the application of the Bronx, Yonkers and White Plains Railway Company (street surface) for a certificate under section 59 of the Railroad Law. A. S. Gilbert and Douglas E. Shires for the applicant; A. B. Quencer for the New York Central and Hudson River Railroad Company in opposition; Alfred E. Smith for the Yonkers and White Plains Railway; Mills & Johnson (Mr. Johnson appearing) for the Yonkers Railroad Company. After hearing arguments the hearing was adjourned until Tuesday, September 19, 1905, 10 o'clock a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. This hearing was subsequently adjourned until September 22, same time and place. (Case No. 3319.)

Adjourned hearing in the matter of the application of the New York City Interborough Railway Company (street surface electric), under section 68 of the Railroad Law, for a determination as to how its railway shall cross

the New York and Harlem Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at One Hundred and Eightieth street, borough of the Bronx, New York city, it being proposed that said street surface railway shall cross said steam railroad on an existing bridge which carries One Hundred and Eightieth street across said steam railroad. Strong & Cadwalader (Mr. Gale appearing) for the applicant; A. B. Quencer for the New York Central and Hudson River and the New York and Harlem railroad companies in opposition. At this hearing to-day the applicant company and the companies appearing in opposition were to submit to the Board an agreement (if it had been reached) as to the cost of maintenance of the bridge. This agreement has not been reached, and the hearing to-day was adjourned until Tuesday, September 5, 1905, 2:30 p. m., at the office of the Board in Albany. (Case No. 3399.)

Adjourned hearing in the matter of the petition of the town board of the town of East Hamburg, Erie county, under section 62 of the Railroad Law, as to changing the Buffalo road highway grade crossing of the Buffalo, Rochester and Pittsburgh Railway in said town to an undercrossing. John S. Rockwell for the petitioners and for the Buffalo, Rochester and Pittsburgh Railway Company in favor of the application; F. F. Holmwood, supervisor of the town of East Hamburg, in favor of the petition; Charles Hoag, highway commissioner of the town of East Hamburg, in favor of the petition. After hearing evidence and arguments the hearing was closed. (Grade Crossing Case No. 419.)

Adjourned hearing in the matter of division of expense between the Delaware, Lackawanna and Western Railroad Company and the New York Central and Hudson River Railroad Company of said companies' share of the cost of the Willis avenue overcrossing of the Oswego and Syracuse Railroad (leased to and operated by the Delaware, Lackawanna and Western Railroad Company), the West Shore Railroad, lessor, and the New York Central and Hudson River Railroad, in which matter a determination, dated January 12, 1905, as to this division of expense, has been made by this Board. A. B. Quencer for the New York Central and Hudson River Railroad Company; W. S. Jenney for the Delaware, Lackawanna and Western Railroad Company. After hearing arguments the hearing was adjourned until Tuesday, September 19, 1905, 12 m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. This hearing was subsequently adjourned until September 22, 1905, same time and place. (Grade Crossing Case No. 174.)

#### *Reports.*

Report of the electrical expert, dated August 23, 1905, as to the physical condition of the portion of the Olean, Rock City and Bradford Railroad in this State. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (Case No. 3196.)

Report of the electrical expert, dated August 23, 1905, as to the physical condition of the Buffalo, Gardenville and Ebenezer Railway (Buffalo Southern Railway). Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (Case No. 2325.)

#### *Crossings.*

The Board authorized the employment of E. C. Burns, civil engineer, as inspector during the month of September, 1905, on the work of construction of an overhead crossing of the Western New York and Pennsylvania Railway (leased to and operated by the Pennsylvania Railroad Company) in Valley street, Mayville, under section 65 of the Railroad Law, at a compensation of six dollars a day, and no expenses. (Grade Crossing Case No. 491.)

#### *Orders.*

Application of the Glen Cove Railroad Company for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3378.)

Petition of the town board of the town of East Hamburg, Erie county, under section 62 of the Railroad Law, as to changing a grade crossing of the Buffalo, Rochester and Pittsburg Railway in said town by a highway known as the Buffalo road, situated at a point between Big Tree road and Deuel's Corners, from grade to an undercrossing of said railway. Determination, as shown by office original determination on file, that the crossing shall be changed to an undercrossing. (Grade Crossing Case No. 419.)

John S. Kennedy, Secretary, informed the Board that he had filed his oath of office with the Secretary of State on the 28th instant, and assumed the duties of Secretary. He also informed the Board that he had designated E. C. McEntee as Assistant Secretary.

The Board adjourned.

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ALBANY, SEPTEMBER 5, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dickey and Aldridge (by delegation of the Board).

*Hearings.*

In the matter of the determination of this Board, dated July 19, 1904, in the application of the Hudson Valley Railway Company (street surface electric), under section 68 of the Railroad Law, as to crossing the steam railroad operated by The Delaware and Hudson Company, in Broadway, in the village of Fort Edward, in which matter the time limit for the temporary continuance of the crossing in question, which is a grade crossing, was extended by the Board on July 6, 1905, until this hearing and determination after this hearing, James McPhillips, for the Hudson Valley Railway Company, appeared before the Board and stated that said company and L. E. Carr, counsel for The Delaware and Hudson Company, had agreed to a temporary postponement of this hearing. On this statement this hearing was adjourned to a date to be thereafter fixed. The order of this Board, dated July 6, 1905, as to the existence of the temporary grade crossing during the months of July and August, 1905, pending the hearing, is to continue until a determination in this matter by the Board after hearing. (See minutes of August 14, 1905.) (Case No. 2685.)

Application of the Rochester, Syracuse and Eastern Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (double track, street surface) shall cross above, below or at grade the New York Central and Hudson River Railroad (steam) and the West Shore Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at four points, viz.:

1. The Auburn branch of the New York Central and Hudson River Railroad near Brighton station (it being proposed that the railroad of the applicant shall cross the steam railroad at this point above the grade of the steam railroad);

2. The West Shore Railroad at a point about one and one-half miles west of Fairport (it being proposed that the railroad of the applicant shall cross the steam railroad at this point below the grade of the steam railroad);

3. The New York Central and Hudson River Railroad and the West Shore Railroad (one crossing) at a point about half way between the villages of Newark and Lyons (it being proposed that the railroad of the applicant shall cross the steam railroads at this point above the grade of the steam railroads); and asking this Board to fix the proportion of expense of such crossings which shall be paid by each railroad company. William Nottingham for the applicant; George H. Walker for the New York Central and Hudson River Railroad Company, not in opposition. A copy of an agreement between the companies as to these crossings was filed with the Board. After hearing arguments the hearing was closed. (Case No. 3404.)

Application of the Auburn and Syracuse Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad



(single track, street surface) shall cross the Lehigh Valley Railroad (steam, three tracks) at West Genesee street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. William Nottingham for the applicant; F. B. Taber for the Lehigh Valley Railroad Company and the Lehigh and New York Railroad Company, in opposition to a crossing at grade. After hearing evidence and arguments the hearing was adjourned until Friday, September 22, 1905, 11:30 a. m., at the New York office of this Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3405.)

Application of the Auburn and Northern Electric Railroad Company, under section 68 of the railroad Law, for a determination as to whether its railroad (single track, street surface) shall cross the Lehigh Valley Railroad (steam, single track) at State street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. William Nottingham for the applicant; F. B. Taber for the Lehigh Valley Railroad Company and the Lehigh and New York Railroad Company, in opposition to a crossing at grade. After hearing evidence and arguments the hearing was adjourned until Friday, September 22, 1905, 11:30 a. m., at the New York office of this Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3406.)

Adjourned hearing in the matter of the application of the New York City Interborough Railway Company (street surface electric), under section 68 of the Railroad Law, for a determination as to how its railway shall cross the new York and Harlem Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at One Hundred and Eightieth street, borough of the Bronx, New York city, it being proposed that said street surface railway shall cross said steam railroad on an existing bridge which carries One Hundred and Eightieth street across said steam railroad. Strong & Cadwalader (Mr. Gale appearing) for the applicant; George H. Walker for the New York Central and Hudson River and the New York and Harlem railroad companies in opposition. At this hearing to-day the applicant company and the companies appearing in opposition were to submit to the Board an agreement (if it had been reached) as to the cost of maintenance of the bridge. This agreement has not been reached, and the hearing to-day was adjourned until Friday, September 22, 1905, 10 a. m., at the New York office of this Board, room 406, Whitehall building, 17 Battery place, New York city. (Case No. 3399.)

Application of the town board of the town of Hunter, Greene county, under section 61 of the Railroad Law, for a determination as to whether an extension of a highway in said town shall cross the Ulster and Delaware Railroad over, under or at the grade of said railroad. M. Lackey, Jr., for the applicant; Amos Van Etten for the Ulster and Delaware Railroad Company, not in opposition to a crossing at grade. After hearing arguments the arguments were closed, but the matter was held open. (Grade Crossing Case No. 555.)

Application (second application) of the Cooperstown and Mohawk Valley Railway Company (steam) for a certificate under section 59 of the Railroad Law. In this matter a certificate under section 59 of the Railroad Law, dated August 21, 1901, has been issued to the company; this application being made because the company did not file its articles of association in the clerk's office of Otsego county. A. C. Tennant for the applicant; L. J. Arnold for Jane R. A. Brown, John A. Rutherford as executor of the Myers Estate, Robert B. McKim, Edward S. Clark, Elizabeth S. Potter, Duncan C. Pell, Adolphus Busch, William Shultz, property owners, and for Henry B. Coman as Receiver of the Oneonta, Cooperstown and Richfield Springs Railway Company, in opposition. After hearing evidence and arguments the hearing was adjourned until Tuesday, October 10, 1905, 3 p. m., at the office of the Board in Albany. (Case No. 2500.)

Application of the Ticonderoga Union Terminal Railroad Company (street surface) for a certificate under section 59 of the Railroad Law. Holmes, Bryan & Holmes for the applicant; W. F. Rathbone for The Delaware and Hudson Company, in opposition. Without the hearing of evidence or arguments the hearing was adjourned until Wednesday, October 11, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3395.)

#### *Applications.*

Application of the Elmira, Corning and Waverly Railway (street surface) for a certificate under section 59 of the Railroad Law. Ordered hearing set for Tuesday, September 26, 1905, 10 a. m., at the Rathbun House, Elmira. (Case No. 3412.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 14, 1905, as to the closing and discontinuance of two highway grade crossings of the New York, Ontario and Western Railway at its Stony Ford station in the town of Wallkill, Orange county, and the construction of new pieces of highway and an overhead bridge crossing of said railway to be located between the two existing grade crossings, original tracing of the plans of this work were submitted to the Board by the company. Ordered approved and endorsement of such approval made on the original tracings, and they be returned to the company. In this case the substructural work is to be done by the company itself; the proposals of contractors for the bridge will be submitted to the Board. (Grade Crossing Case No. 442.)

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

Harry C. Keyes (stenographic and typewriting work for electrical expert).....	\$125 00
C. R. Barnes (expenses).....	115 00
Wm. McNeilly (postage stamps).....	100 00
	<hr/>
	\$340 00

The Board adjourned.

LIVINGSTON MANOR, SEPTEMBER 12, 1905—2 P. M.

Commissioners Dickey and Aldridge (by delegation of the Board) held the following hearings:

#### *Hearings.*

Petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Martin highway grade crossing, the Mott highway grade crossing and the Bussey highway grade crossing (the first two being by the same highway at different points) of said company's railway and the construction of a new piece of highway and an overhead crossing of said railway in the town of Rockland, Sullivan county, near Livingston Manor. George Marsden for the petitioner; J. M. Maybee for property owners, in opposition; Mr. Maybee also appeared for the town board of the town of Rockland, not in opposition; W. B. Voorhies, supervisor of the town, appeared in favor of the petition. After hearing arguments the arguments were closed but the matter was held open. The Commissioners inspected the crossings and locality. (Grade Crossing Case No. 462.)

The Board took a recess until 4 p. m.

AFTER RECESS—4 P. M.

CENTERVILLE, SEPTEMBER 12, 1905.

*Hearings.*

Adjourned hearing in the matter of the petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of its railway by a highway known as the Centerville road at the Centerville station on said railway in the town of Fallsburg, Sullivan county, and the construction of new pieces of highway and an overhead bridge crossing of the railway. George Marsden for the petitioner; Ellsworth Baker for John McDowell, Herman Karsten, Francis R. Hill and John A. Smith, property owners, in opposition. After hearing evidence and arguments (some of the witnesses being members of the town board) the evidence was closed unless George H. Smith, who appeared for the town board in opposition at the hearing in this matter on July 19, 1905, desires to present further evidence or desires to be heard further, in which case there will be another hearing. The Commissioners inspected the crossing and locality. (Grade Crossing Case No. 458.)

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NEW YORK, SEPTEMBER 13, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Investigation by the Board of derailling of a Ninth avenue train on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company) at Ninth avenue and Fifty-third street, September 11, about 7:05 a. m. Charles A. Gardiner and Delancey Nichol, attorneys, appeared for the Interborough Rapid Transit Company. After hearing evidence a recess was taken until 2:30 p. m. (Street Case No. 28—1905.)

AFTER RECESS—2:30 P. M.

The Board again met. All the Commissioners present.

*Hearings.*

The investigation of the accident on the Manhattan Railway, September 11, at Fifty-third street and Ninth avenue, was resumed. Appearances as in the morning. After hearing evidence further the evidence was closed unless the Board determines to call further witnesses or recall some of the witnesses called at this hearing. (Street Case No. 28—1905.)

Hearings in petitions of the Long Island Railroad Company, under section 62 of the Railroad Law, which were set for to-day on Long Island in Grade Crossing Cases Nos. 379, 380, 229, 261, 259 and 235, were postponed until Friday, September 15, 1905, at the same times and places, notice of these postponements being posted in the stations of the Long Island Railroad Company at which stations the hearings were called.

The Board adjourned.

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MEDFORD STATION, L. I., SEPTEMBER 14, 1905—12 M.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Horseblock road in the town of Brookhaven, Suffolk county, situated at a point about 8,450 feet easterly from the Medford Station on said company's railroad, the travel thereon to be diverted therefrom by existing highways to the next crossing at grade of said railroad east of said Horseblock road crossing and known as Munsell road, or, the petition asking that both the Horseblock road crossing and the Munsell road crossing be closed and discontinued, the travel from both of said crossings to be diverted to an undercrossing of said railroad to be constructed in the vicinity of the present crossings. J. F. Keany for the petitioner; James M. Ashton, highway commissioner, for the town of Brookhaven, in favor of the petition. After hearing evidence and arguments the evidence was closed but the matter was held open. The Commissioners inspected the crossings and locality. Mr. Savage (civil engineer Long Island Railroad Company, who was a witness) only described the first proposition and said nothing about the second proposition. (Grade Crossing Case No. 234.)

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as John Hulse's road in the town of Brookhaven, Suffolk county situated at a point about 2600 feet westerly from the Medford station on said company's railroad, the travel thereon to be diverted therefrom by existing highways to an existing grade crossing of said railroad by a highway known as the Medford or Port Jefferson road situated next west of the John Hulse's road crossing, or to an overhead crossing of said railroad to be constructed at or near the present John Hulse's road grade crossing. J. F. Keany for the petitioner; James M. Ashton, highway commissioner, for the town of Brookhaven in opposition. After hearing evidence and arguments the evidence was closed but the matter was held open. The company is to present a new petition in this matter. When said new petition is received the matter of this petition is to be closed. The Commissioners inspected the crossings and locality. (Grade Crossing Case No. 257.)

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as Fish or Thicket road in the town of Brookhaven, Suffolk county, situated at a point about 8600 feet westerly from the Medford station on said company's railroad, the travel thereon to be diverted therefrom by existing highways to an undercrossing of said railroad by a highway known as Old Pine Neck road or Tunnel road and being the next crossing of said railroad east of said Fish or Thicket road, or to a grade crossing of said railroad by a highway known as Douglass street or Blue Point road and being the next crossing of said railroad west of said Fish or Thicket road. J. F. Keany for the petitioner; James M. Ashton, highway commissioner for the town of Brookhaven, in favor of the petition. After hearing evidence and arguments the evidence was closed but the matter was held open. The Board inspected the crossings and locality. (Grade Crossing Case No. 258.)

The hearing in the matter of the petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as Old Pond road in the town of Islip, Suffolk county, situated at a point about 8600 feet easterly from the Great River station on said company's railroad, the travel thereon to be diverted therefrom by the construction of a new piece of highway on the north side of the railroad between Old Pond road and South Country road to an overhead crossing of said railroad to be constructed at the location of the present South Country road grade crossing next west of said Old Pond road grade crossing, which was to have been held at the Oakdale station on said company's railroad on this date at 3 p. m., was not held, because publication in newspapers of the notice of hearing was not properly made. The station agent at Oakdale

was notified by telegraph by the Board to this effect and he was instructed to so notify any one who appeared in this matter. (Grade Crossing Case No. 246.)

The hearing in the matter of the petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as South Country road in the town of Islip, Suffolk county, situated at a point about 7470 feet easterly from the Great River station on said company's railroad, the travel thereon to be diverted therefrom to an overhead crossing of said railroad to be constructed about at the point of the present grade crossing, which was to have been held at the Oakdale station on said company's railroad on this date at 3 p. m. was not held, because publication in newspapers of the notice of hearing was not properly made. The station agent at Oakdale was notified by telegraph by the Board to this effect and he was instructed to so notify any one who appeared in this matter. (Grade Crossing Case No. 247.)

The Board adjourned.

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HUNTINGTON, L. I., SEPTEMBER 15, 1905—11:30 A. M.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

The hearings following were to have been held on September 13 but were held on this date. See minutes of September 13.

#### *Hearings.*

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as New York avenue in the town of Huntington, Suffolk county, situated at a point about 100 feet easterly from the Huntington station on said company's railroad, the travel thereon to be diverted therefrom by the construction of new pieces of highway on each side of said railroad to an undercrossing of said railroad to be constructed at a point about 450 feet easterly from said Huntington station. J. F. Keany for the petitioner; A. E. Lowndes, highway commissioner, for the town, in opposition; Willard M. Baylis for property owners, in opposition; Ackerly & Miles (Mr. Miles appearing) for property owners, in opposition. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed.

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as Long Swamp road in the town of Huntington, Suffolk county, situated at a point about 800 feet easterly from the Huntington station on said company's railroad, the travel thereon to be diverted therefrom by the construction of new pieces of highway on each side of said railroad to an undercrossing of said railroad to be constructed at a point about 450 feet easterly from said Huntington station. J. F. Keany for the petitioner; A. E. Lowndes, highway commissioner, for the town, in opposition; Willard M. Baylis for property owners, in opposition; Ackerly & Miles (Mr. Miles appearing) for property owners, in opposition. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The hearings on these two petitions were held as one hearing. It is likely that there will be no further hearings on these two petitions but that the company will send to the Board a new petition in relation to the Long Swamp road crossing and the New York avenue crossing. The Board inspected the crossings and locality. (Grade Crossing Cases Nos. 379 and 380.)

The Board took a recess until 1 p. m.

## MINUTES OF THE BOARD.

AFTER RECESS—1 P. M.

SMITHTOWN STATION, L. I., SEPTEMBER 15, 1905.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Nissequogue road in the town of Smithtown, Suffolk county, situated at a point about 4115 feet easterly from the Smithtown station on said company's railroad, the travel thereon to be diverted therefrom by existing highways to a grade crossing of said company's railroad by a highway known as Landing avenue next south of said Nissequogue road grade crossing, or to an overhead crossing of said railroad to be constructed at or near the present Nissequogue road grade crossing. J. F. Keany for the petitioner; Rowland Miles for the town of Smithtown, in opposition to the first proposition but in favor of the construction of an overcrossing at or near the present Nissequogue road grade crossing. After hearing evidence and arguments the evidence was closed but the matter was held open. The Board inspected the crossings and locality. (Grade Crossing Case No. 229.)

The Board took a recess until 3 p. m.

AFTER RECESS—3 P. M.

CENTRAL PARK STATION, L. I., SEPTEMBER 15, 1905.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as the Plainview road or Jerusalem avenue in the town of Oyster Bay, Nassau county, situated at a point about 600 feet westerly from the Central Park station on said company's railroad, the travel thereon to be diverted therefrom by existing highways on each side of said railroad to an existing grade crossing of said railroad by a highway known as Park avenue, situated next east of the Plainview road or Jerusalem avenue grade crossing. J. F. Keany for the petitioner; George B. Stoddard for the town of Oyster Bay, in opposition; James J. Powers for residents, in opposition. Mr. Powers filed a protest of residents in opposition. It appearing that notice of this hearing was sent to the supervisor of the town of North Hempstead instead of to the supervisor of the town of Oyster Bay, the hearing was adjourned to a date to be thereafter fixed. The next hearing to be set as a new hearing and not as an adjourned hearing. (Grade Crossing Case No. 261.)

The hearing in the matter of the petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Delamaters road or Chestnut avenue in the town of Islip, Suffolk county, situated at a point about 3450 feet westerly from the Ronkonkoma station on said company's railroad, the travel thereon to be diverted therefrom by existing highways on each side of said railroad to an existing grade crossing of said railroad by a highway known as Ocean avenue or lake land road, situated next west of the Delamaters road or Chestnut avenue grade crossing, which was to have been held at the Ronkonkoma station on said company's railroad on this date, at 4 p. m., was not held, because publication in newspapers of the notice of hearing was not properly made. The station agent at Ronkonkoma was notified by telegraph by the Board to this effect and he was instructed to so notify any one who appeared in this matter. (Grade Crossing Case No. 259.)

The hearing in the matter of the petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Broadway or Patchogue and Lake road in the town of Islip, Suffolk county, situated at a point about 8900 feet easterly from the Ronkonkoma station on said company's railroad, the travel thereon to be diverted therefrom by the construction of a new piece of highway on the southerly side of said railroad to the next crossing at grade of said railroad west of said Broadway or Patchogue and Lake road crossing, which was to have been held at the Ronkonkoma station on said company's railroad on this date, at 4 p. m., was not held, because publication in newspapers of the notice of hearing was not properly made. The station agent at Ronkonkoma was notified by telegraph by the Board to this effect, and he was instructed to so notify any one who appeared in this matter. (Grade Crossing Case No. 235.)

The Board adjourned.

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ALBANY, SEPTEMBER 16, 1905.

*Complaints.*

Raymond C. Spaulding against the Union Railway Company as to the condition of north rail of eastbound track of said company's railway a little below Bedford avenue and East Sixth street, Mount Vernon. Copy sent company. Answer of company received. Copy sent complainant. Report dated September 15, 1905, received from the electrical expert. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. While the Board did not meet in Albany to-day, this action was taken by its direction. (Case No. 3418.)

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NEW YORK, SEPTEMBER 22, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Adjourned hearing in the matter of the application of the Bronx, Yonkers and White Plains Railway Company (street surface) for a certificate under section 59 of the Railroad Law. A. S. Gilbert and Wm. C. Shires for the applicant; Francis A. Winslow for the city of Yonkers; A. B. Quencer for the New York Central and Hudson River Railroad Company, in opposition; Mills & Johnson (Mr. Mills appearing) and H. A. Robinson for the Yonkers Railroad Company, in opposition; A. E. Smith for the Yonkers and White Plains Railway, in opposition. After hearing evidence and arguments the hearing was closed with the exception that the applicant was informed it might present proof as to the *bona fides* of the enterprise and the financial ability of the projectors to build the road, at the meeting of the Board in Elmira on September 26 or in Albany on October 11, 1905. Mr. Mills is to file with the Board a photograph of a house in the territory in question, and Mr. Smith is to file with the Board a copy of the franchise of the Yonkers and White Plains Railway. (Case No. 3319.)

Adjourned hearing in the matter of the application of the New York City Interborough Railway Company (street surface electric), under section 63 of the Railroad Law, for a determination as to how its railway shall cross the New York and Harlem Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at One Hundred and Eightieth street, borough of the Bronx, New York city, it being proposed that said street surface railway shall cross said steam railroad on an existing bridge which carries One Hundred and Eightieth street across said steam

railroad. Strong and Cadwalader (Mr. Dana appearing) for the applicant; A. B. Quencer for the New York Central and Hudson River Railroad Company, in opposition. Without the taking of evidence or hearing of arguments the hearing was adjourned, at the request of the applicant, until Wednesday, October 11, 1905, 12 m., at the office of the Board in the Capitol, Albany. (Case No. 3399.)

Adjourned hearing in the matter of the application of the Auburn and Syracuse Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track, street surface) shall cross the Lehigh Valley Railroad (steam, three tracks) at West Genesee street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. William Nottingham for the applicant; J. F. Shaperkotter for the Lehigh Valley Railroad Company and the Lehigh and New York Railroad Company, in opposition to a crossing at grade; T. M. Osborne, mayor for the city of Auburn. After hearing arguments the hearing was adjourned until Wednesday, October 11, 1905, 10 a. m., at the office of the Board in the Capitol, Albany. There is to be a conference between representatives of the electric road, the steam road, the city, and the superintendent of the grade crossing bureau in this department, for the purpose of agreeing upon a plan at the office of the mayor, Auburn, on Wednesday, October 4, 1905, 10 a. m. (Case No. 3405.)

Adjourned hearing in the matter of the application of the Auburn and Northern Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track, street surface) shall cross the Lehigh Valley Railroad (steam, single track) at State street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. William Nottingham for the applicant; J. F. Shaperkotter for the Lehigh Valley Railroad Company and the Lehigh and New York Railroad Company, in opposition to a crossing at grade; T. M. Osborne, mayor, for the city of Auburn. After hearing arguments the hearing was adjourned until Wednesday, October 11, 1905, 10 a. m., at the office of the Board in the Capitol, Albany. There is to be a conference between representatives of the electric road, the steam road, the city, and the superintendent of the grade crossing bureau in this department, for the purpose of agreeing upon a plan, at the office of the mayor, Auburn, on Wednesday, October 4, 1905, 10 a. m. (Case No. 3406.)

Adjourned hearing in the matter of division of expense between the Delaware, Lackawanna and Western Railroad Company and the New York Central and Hudson River Railroad Company of said companies' share of the cost of the Willis avenue overcrossing of the Oswego and Syracuse Railroad (leased to and operated by the Delaware, Lackawanna and Western Railroad Company), the West Shore Railroad, lessor, and the New York Central and Hudson River Railroad, in which matter a determination, dated January 12, 1905, as to this division of expense, has been made by this Board. A. B. Quencer for the New York Central and Hudson River Railroad Company; W. S. McGuire for the Delaware, Lackawanna and Western Railroad Company. After hearing evidence and arguments the hearing was closed. Mr. Quencer is to file in this office copies of four letters in this matter, and Mr. McGuire is to file a brief with the Board, if he so desires. (Grade Crossing Case No. 174.)

#### *Reports.*

Report of the electrical expert, dated August 23, 1905, as to the derailment of a car on the Utica and Mohawk Valley Railway, August 13, 1905, on Highland avenue, Utica. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (Street Case No. 21—1905.)

The Board considered and adopted its report and recommendations in the matter of derailling of a Ninth avenue train on the Manhattan Railway (leased



to and operated by the Interborough Rapid Transit Company) at Ninth avenue and Fifty-third street, September 11, 1905, about 7:05 a. m., and the report and recommendations were ordered sent to the Interborough Rapid Transit Company. (Street Case No. 28—1905.)

*Bill Approved.*

The following bill was approved:

*General Expenses.*

W. V. Green..... \$20 00

The Board adjourned.

ELMIRA, SEPTEMBER 26, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Application of the Elmira, Corning and Waverly Railway for a certificate under section 59 of the Railroad Law. Charles A. Collin, A. C. Wade and Thomas O'Connor for the applicant; Boyd McDowell and Theodore R. Tuthill for the Chemung Valley Traction Company, in opposition; Seymour Lowman for the village of Wellsburg, town of Chemung, town of Ashland and town of Southport, in opposition; Richard H. Thurston for the city of Elmira, in opposition; Baldwin, Turnbull & Allison for Hans Peterson and other property owners, in opposition; E. J. Baldwin for himself and J. L. Storms, property owners, in opposition; Burton S. Chamberlin for Bessie Roe and Edward L. Roe, in opposition; H. S. Thayer, property owner, in opposition; John B. Stanchfield for the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company; Diven & Diven for the Northern Central Railway Company; H. H. Rockwell for James H. Owen and other property owners; J. C. Ingham for the Sayre and South Waverly Railway Company (a Pennsylvania corporation). After hearing evidence and arguments a recess was taken until 2 p. m. (Case No. 3412.)

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn, Dickey and Aldridge.

*Hearings.*

In the matter of the application of the Bronx, Yonkers and White Plains Railway Company for a certificate under section 59 of the Railroad Law, the Board in executive session heard evidence on the *bona fides* of the enterprise and of the financial ability of the projectors to build the road, after which it was determined that further evidence on the same subject as well as on the payment of ten per cent. of the capital stock would be heard at the office of the Board in Albany on Tuesday, October 10, 1905, at 2:30 p. m. (Case No. 3319.)

The hearing in the matter of the application of the Elmira, Corning and Waverly Railway for a certificate under section 59 of the Railroad Law was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned until Tuesday, October 24, 1905, 10 a. m., at the Rathbun House, in the city of Elmira. (Case No. 3412.)

The Board adjourned.

BUFFALO, OCTOBER 3, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Dickey.

*Hearings.*

Application (reapplication) of the Buffalo Frontier Terminal Railroad Company (steam) for a certificate under section 59 of the Railroad Law. Joseph G. Dudley for the applicant; Pooley & Spratt (Mr. Pooley appearing) for the New York Central and Hudson River Railroad Company, in opposition; Bissell, Carey & Cooke (Mr. Cooke appearing) for the Lehigh Valley Railroad Company, the Lehigh Valley Railway Company and the Buffalo, Thousand Islands and Portland Railroad Company, in opposition; John S. Rockwell, generally, for the Buffalo, Rochester and Pittsburg Railway Company; Bushnell & Metcalf (Mr. Bushnell appearing) for the Buffalo, Lake Erie and Niagara Railroad Company; Moot, Sprague, Brownell & Marcy (Mr. Marcy appearing) for the Erie Railroad Company; Rogers, Locke & Babcock (Irving L. Fisk appearing) for the Delaware, Lackawanna and Western Railroad Company; Lockwood, Hoyt & Green for the Lake Shore and Michigan Southern Railway Company; John W. Fisher for the town of West Seneca and the town of Cheektowaga; O'Malley, Smith & O'Malley for Grattan & Jennings. After the filing of proof of publication of notice of hearing and service of notice of hearing on highway commissioners and proof of publication of articles of association by stipulation of all the attorneys present, and without the hearing of evidence and arguments, the hearing was adjourned until Tuesday, December 5, 1905, 10 a. m., at the Iroquois Hotel, Buffalo. (Case No. 3082.)

*Crossings.*

Application of the Terminal Railway of Buffalo and the Lehigh Valley Railroad Company (joined in one petition), under section 60 of the Railroad Law, for a determination as to the manner in which a connecting track between the railroad of the Terminal Railway of Buffalo and the railroad of the Lehigh Valley Railroad Company known as its Depew and Tonawanda branch in the village of Depew, Erie county, shall cross a highway in said village known as the Ellicott road. Ordered filed. (Grade Crossing Case No. 560.)

The Board adjourned.

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**ALBANY, OCTOBER 10, 1905.**

The Board met pursuant to adjournment. Present, Commissioners Dunn, Dickey and Aldridge.

The minutes of the meetings of August 24 and 29, September 5, 12, 13, 14, 15, 16, 22 and 26, and October 3 were read and approved.

*Hearings.*

In the matter of the application of the Bronx, Yonkers and White Plains Railway Company for a certificate under section 59 of the Railroad Law, in which matter the public hearing was closed on September 22, 1905, the Board on this date heard the company and those in opposition on the question of the payment of the ten per cent. of the capital stock of the company before the filing of its articles of association, as to which no testimony prior to this date has been given. William C. Shires appeared for the applicant; Mills & Johnson (Mr. Mills appearing) appeared for the Yonkers Railroad Company, in opposition; W. P. Rudd appeared for the New York Central and Hudson River Railroad Company, in opposition. After hearing evidence and arguments Mr. Shires was informed that the Board desired further evidence on the question of the payment of the ten per cent. and the hearing on this question alone was postponed to a date to be thereafter fixed. The applicant was also to furnish on this date further evidence of the bona fides of the enterprise and of the financial ability of the projectors to build the road but was not prepared to go on with this evidence to-day and this matter was adjourned until October 11, 1905, 2:30 p. m. On October 11 Mr. Shires informed the Board by letter that the company was not prepared to go on on the subject

of the *bona fides* and financial ability on that date and this matter was also postponed to a date to be thereafter fixed. (Case No. 3319.)

Adjourned hearing in the matter of the application (second application) of the Cooperstown and Mohawk Valley Railway Company (steam) for a certificate under section 59 of the Railroad Law. In this matter a certificate under section 59 of the Railroad Law, dated August 21, 1901, has been issued to the company; this application being made because the company did not file its articles of association in the clerk's office of Otsego county. Tilly Blakely and H. L. Beach for the applicant; L. J. Arnold for Jane R. A. Brown and others (see minutes of September 5, 1905), in opposition. The applicant asked leave to withdraw this application without prejudice to the making of another application, which leave was granted. Closed. (Case No. 2500.)

### Complaints.

E. A. Bedell against the Albany and Hudson Railroad Company as to service rendered the public. Answer of company received. Copy sent complainant. Reply of complainant received. Ordered hearing set for Thursday, November 9, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3402.)

C. N. Pease and others of Stephentown against the Rutland Railroad Company as to lack of fences of that company along complainants' lands. Answer of company received. Copy sent Mr. Pease for complainants. Letter dated September 20, 1905, received from the company, stating that the fences in question have been erected. Copy sent Mr. Pease for complainants. Closed. (Case No. 3397.)

W. R. Jenks of Old Chatham against the Rutland Railroad Company as to condition of fences of said company along his farm. Letter dated September 26, 1905, received from the company, stating that the fences have been constructed. The complainant was so notified. Closed. (Case No. 3383.)

H. W. Wright and C. W. Spencer of New Lebanon against the Rutland Railroad Company as to lack of fences of that company along complainants' farms. Copy sent company. Answer of company received, stating that "the matter will be looked into at once." Copy sent complainants. Letter dated October 9, 1905, received from C. W. Spencer, stating that the fence has not been constructed along his farm. Letter dated October 10, 1905, written company on the subject. (Case No. 3421.)

W. W. Hare of Groton against the Ithaca Street Railway Company as to rate of fare charged and lack of car accommodations. Copy sent company. Answer of company received. Copy sent complainant. Ordered letter written complainant in relation to statute as to rate of fare, as shown by copy on file. Closed. (Case No. 3423.)

W. H. Price against The Brooklyn Heights Railroad Company as to alleged removal of station of the Brighton Beach line of said company's railroad from avenue C to avenue D. Answer of company received, denying that there has been any change made in the location of the station in question and stating that none is contemplated at present. Copy sent complainant. A report in this matter, dated September 6, 1905, was received from the electrical expert, to the effect that the station in question has not been changed in location. Ordered filed. Closed. (Case No. 3407.)

B. W. Dinsmore against the New York City Railway Company, complaining of noise made by cars of that company on Amsterdam avenue, New York city. Letter dated September 25, 1905, received from company as to steps taken to remedy flat wheels and unusual noises of cars. Copy sent complainant. Ordered carried on file. (Case No. 3377.)

W. J. Evans of Peoria, Illinois, against the Buffalo, Rochester and Pittsburg Railway Company as to switching charge on a car at Rochester, N. Y. Copy sent company. Answer of company received, stating that the charge in question made by the company was not a switching charge but was for the transportation of the car in question for a considerable distance. Copy sent complainant. Closed. (Case No. 3422.)

J. K. Hotaling of Jamesville against the Syracuse and Suburban Railroad Company as to conditions in the operation of a spur of said company's rail-

road from Orville. Copy sent company. The electrical expert is to make a report in this matter. (Case No. 3430.)

F. E. Rosenberg of North Petersburg against the Rutland Railroad Company as to fences of that company along his land. Letter dated September 29, 1905, received from company, stating that the work of rebuilding these fences would be started "latter part of this week." Copy sent complainant. Closed. (Case No. 3408.)

J. H. Waterford against the Buffalo Southern Railroad Company as to operation of cars. Report dated August 26, 1905, received from the electrical expert. Ordered filed. Closed. (Case No. 3391.)

Woodlawn Taxpayers' Association against the Union Railway Company and New York City Railway Company as to transfers. This case was closed on the minutes of July 6, 1905. Letter dated October 7, 1905, received from complainants. Ordered letter written complainants, as shown by copy on file and case not reopened. (Case No. 3364.)

West End Board of Trade of Brooklyn against The Brooklyn Heights Railroad Company as to the discontinuance of a line of cars of said company from Thirty-ninth street ferry to Bay Nineteenth street. Copy sent company. Letter dated September 5, 1905, received from the company. Report dated September 20, 1905, received from the electrical expert as to a conference on the subject of this complaint at the company's office between complainants, a representative of the company and the electrical expert, at which a restoration of the operation of certain cars was agreed to by the company. Copy sent complainants. Letter dated September 23, 1905, received from complainants. Ordered filed. Closed. (Case No. 3411.)

Raymond C. Spaulding against the Union Railway Company as to the condition of north rail of eastbound track of said company's railway a little below Bedford avenue and East Sixth street, Mt. Vernon. Letter dated September 19, 1905, received from complainant. Ordered filed. Supplemental report, dated September 27, 1905, received from the electrical expert. Ordered filed. Letter dated October 2, 1905, received from company, stating that the recommendations of the Board would be complied with. Ordered filed. Closed. (Case No. 3418.)

Residents of Sherman Park against the New York Central and Hudson River Railroad Company asking that a passenger station be established by said company at Sherman Park on its New York and Harlem division. Letter dated September 18, 1905, received from the company. Copy sent complainants. (Case No. 3393.)

Mary R. Campbell, secretary, Women's Municipal League, borough of the Bronx, New York city, against the New York City Railway Company, as to establishment of a shelter station on its railway at the Two Hundred and Twenty-first street and Harlem ship canal terminal. The electrical expert has been ordered to make a report in this matter. (Case No. 3426.)

Julian Scholl & Company of Kingston against the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) as to charge for switching cars between that railroad and the Ulster and Delaware Railroad. Copy sent company. Letter dated September 14, 1905, received from complainants withdrawing complaint. Closed. (Case No. 3416.)

Walter Rayment of Brooklyn against The Brooklyn Heights Railroad Company in relation to operation of a car on the Calvary Cemetery line of said company's railroad after 12 a. m. Copy sent company. Answer of company received. Copy sent complainant. A report dated October 3, 1905, was received from the electrical expert. Ordered copy of report sent company with a letter of recommendation as shown by office original letter on file. (Case No. 3414.)

S. H. Richmond of New Lebanon Center against the Rutland Railroad Company as to lack of fences of said company along his farm. Copy sent company. Answer of company received. Copy sent complainant. Letter dated October 9, 1905, received from complainant, stating that the fences have not been rebuilt. Letter, dated October 10, 1905, written company on the subject. (Case No. 3413.)

Miss A. A. Burke, of Brooklyn, against The Brooklyn Heights Railroad Company as to condition of its passenger cars on its Ocean avenue line. Copy sent company. Answer of company received. Copy sent complainant. Closed. (Case No. 3415.)

William H. Allen, of East Nassau, against the Rutland Railroad Company as to lack of fence of said company along his land and as to farm crossing of said railroad from his land. Copy sent company. Answer of company received, stating that the matter would be investigated. Copy sent complainant. Letter received from complainant, stating that the fence has not yet been built. Letter, dated October 4, 1905, written the company on the subject. (Case No. 3420.)

Arnold Schramm against The Brooklyn Heights Railroad Company in relation to service rendered the public from the Thirty-ninth street ferry, Brooklyn, to Bensonhurst. Letter dated September 18, 1905, received from the company as to recommendation of the Board, and letter dated September 22, 1905, received from complainant. Ordered filed. Closed. (Case No. 3389.)

Daniel Goldschmidt against the Catskill Mountain Railway Company in relation to passenger fare charged. Copy sent company. Answer of company received. Copy sent complainant. Reply of complainant received. Ordered letter written complainant as shown by copy on file. Closed. (Case No. 3419.)

Common council of the city of Schenectady against the New York Central and Hudson River Railroad Company as to removal of a culvert or undercrossing now existing on the Villa road in said city and its replacement by a bridge supporting the railroad and leaving a wider undercrossing for the street. Report, dated October 9, 1905, received from the superintendent of the grade crossing bureau. Ordered letter written the city, stating that this Board has no jurisdiction in the matter. Closed. (Case No. 3428.)

Margaret E. Rosecrans against the Albany and Hudson Railroad as to alleged intention of the company to discontinue stopping its cars near her residence. Copy sent company. Answer of company received. Letter dated September 28, 1905, written complainant to the effect that the company states in its answer that it has not considered the matter of discontinuing this stop. Closed. (Case No. 3424.)

S. W. Turner against the Interborough Rapid Transit Company (Manhattan Railway division) as to the One Hundred and Sixteenth street and Eighth avenue station of the Manhattan Railway. Letter dated September 18, 1905, received from the company, and supplemental report, dated September 20, 1905, received from the electrical expert. Ordered filed. Closed. (Case No. 3275.)

Lawson Pontius and Sidney Eshenour of the town of Fayette, Seneca county, against the Lehigh Valley Railroad Company as to proposed raising of a highway bridge crossing said railroad. Report, dated October 6, 1905, received from the superintendent of the grade crossing bureau. Ordered letter written complainants to the effect that the raising of this bridge is a matter between the town and company. Closed. (Case No. 3429.)

Mrs. J. R. Townsend against the Long Island Railroad as to alleged dangerous crossing of the Port Jefferson branch of said railroad between Huntington and Greenlawn. Ordered letter written complainant as to the town board making a petition here under section 62 of the Railroad Law as to this crossing. Closed. (Case No. 3427.)

Crayton L. Earley, attorney for Polly Edwards, of the town of West Union, Steuben county, against the New York and Pennsylvania Railroad Company as to fence of said company along the land of complainant's client. Copy sent company. (Case No. 3410.)

J. W. Simpson, of Middletown, against the Pochuck Railroad Company, as to highway crossing of its railroad and as to passenger train service on its railroad. Report, dated August 22, 1905, received from the inspector, and letter, dated September 18, 1905, received from complainant. Ordered filed. This case was closed on the minutes of August 24, 1905, and is not reopened. (Case No. 3371.)

J. E. Brackenridge, commissioner of public works, Borough of Brooklyn, against the Long Island Railroad Company as to use of the electric third

rail in the operation of a portion of its railroad. Letter, dated September 7, 1905, received from the company, stating that arrangements would be made to comply with the recommendation of the Board as to extension of the protection on the third rail a proper distance beyond the end of the third rail at street crossings. Ordered filed. Closed. (Case No. 3320.)

William A. Lapp and others, of Stephentown, against the Rutland Railroad Company as to fences of that company along the lands of complainants. Copy sent company. Answer of company received. Copy sent complainants. (Case No. 3417.)

William M. MacMahon, New Utrecht Avenue Property Owners' Association and Borough Park and Blythebourne Protective Association against The Brooklyn Heights Railroad Company, as to running of express trains through New Utrecht avenue, Brooklyn, which trains do not stop at 58th street. Letter, dated, September 5, 1905, received from the company stating that the speed of trains in New Utrecht avenue between 54th and 59th streets will be reduced to twelve miles per hour. Letter, dated September 26, 1905, received from J. Wadsworth Norton, as to withdrawal of flagmen from crossings of the railroad on New Utrecht avenue. Copy sent company. Letter, dated October 6, 1905, received from company. Copy sent Mr. Norton. The electrical expert has been instructed to make a report as to withdrawal of the flagmen. (Case No. 3338.)

Correspondence in the matter of failure of the following railroad companies to make quarterly reports for the quarters stated, which matter has been referred to the Attorney-General, was submitted to the Board.

The Jamestown Street Railway Company, quarters ending December 31, 1904, and March 31, 1905.

The Chautauqua Traction Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905.

The Waverly, Sayre and Athens Traction Company, quarters ending December 31, 1904, and March 31, 1905.

City Island Railroad Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905.

Pelham Park Railroad Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905.

Syracuse and Suburban Railroad Company, quarters ending September 30, 1903, December 31, 1904, and March 31, 1905.

Schoharie Valley Railway Company, quarters ending September 30, 1904, December 31, 1904, and March 31, 1905.

A number of these reports have been received.

It was ordered that the failure of certain of the above named companies, as well as others, to file quarterly and annual reports be also referred to the Attorney-General, the names of the companies appearing in the letter to the Attorney-General. (Case No. 3388.)

In the matter of recommendations of this Board to The Brooklyn Heights Railroad Company contained in a letter to the company, dated August 3, 1905, as to service on the Flatbush avenue line, a letter, dated September 27, 1905, was received from the company inclosing a copy of a schedule of increased service on this line. Ordered copy sent A. P. Haven, complainant, and this matter closed. (Case No. 3296.)

#### *Reports.*

In the matter of the recommendations of this Board, dated April 27, 1905, as to construction of derailing switches in the Wallkill Transit Company's Railroad (street surface electric) on each side of the Erie Railroad (steam) at the point where said railroads cross at grade in North street, Middletown, which matter has been referred to the Attorney-General for his consideration and action (see minutes of July 6, 1905), a letter dated September 23, 1905, was received from the Wallkill Transit Company. Ordered letter written the Erie Railroad Company as shown by copy on file. (Case No. 3340.)

The Board took a recess until eight p. m.

## AFTER RECESS—8 P. M.

The Board again met. Present, Commissioners Dunn, Dickey and Aldridge.

*Complaints.*

R. J. Caldwell against The Brooklyn Heights Railroad Company as to protection at curves and as to protection of the third rail (electric) on its elevated railroad lines. Ordered that Mr. Caldwell be notified that he may appear before the Board in this matter at its New York office, room 406, Whitehall building, 17 Battery place, New York city, on Wednesday, October 18, 1905, 11 a. m. Also ordered that the electrical expert of the Board make a report in the matter. (Case No. 3433.)

A letter dated August 30, 1905, was received from the 28th Ward Tax-payers' Protective Association as to the recommendation of this Board, dated February 9 last, to The Brooklyn Heights Railroad Company that a shelter station be established on Gates avenue, between Ralph avenue and Broadway, Brooklyn. Ordered letters written complainants and company as shown by copies on file. (Case No. 3296.)

*Applications.*

Application of the Tunesassa and Bradford Railroad Company (steam) for a certificate under section 50 of the Railroad Law. Ordered hearing set for Elmira, Tuesday, October 24, 1905, one p. m., at the Rathbun House. (Case No. 3425.)

*Reports.*

Report of the superintendent of the grade crossing bureau, dated September 27, 1905, as to a head-on collision between trains on the Albany and Hudson Railroad, 8:17 a. m., September 24, 1905, a short distance north of Nassau. Ordered copy sent company. (Steam Case No. 29—1905.)

Report of the superintendent of the grade crossing bureau, dated September 18, 1905, as to a head-on collision between freight trains on the Erie Railroad at LaSalle, April 16, 1905. Ordered copy sent company. (Steam Case No. 19—1905.)

Report of the electrical expert, dated August 15, 1905, as to collision between passenger cars on the New York City Railway at 125th street and Amsterdam avenue, New York city, August 8, 1905. Ordered copy sent company. (Street Case No. 26—1905.)

Report of the electrical expert, dated September 1, 1905, as to a passenger car on the Flatbush avenue line of The Brooklyn Heights Railroad striking an automobile at Kings highway, Brooklyn, August 24, 1905. Ordered copy sent company. (Street Case No. 27—1905.)

Report of the electrical expert, dated September 19, 1905, as to collision between passenger cars on the New York City Railway at Amsterdam avenue and 125th street, New York city, August 2, 1905. Ordered copy sent company. (Street Case No. 19—1905.)

Report of the electrical expert, dated September 4, 1905, as to a rear collision between trains on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company), at Third avenue and 23rd street, New York city, July 29, 1904. Ordered copy sent company. (Street Case No. 31—1904.)

Report of the superintendent of the grade crossing bureau, dated September 6, 1905, as to rear collision between passenger trains on The Delaware and Hudson Company's railroad about one mile north of Fort Edward, August 18, 1905. Ordered copy sent company. (Steam Case No. 27—1905.)

Report of the electrical expert, dated October 5, 1905, as to rear collision between trains on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company) at 149th street and Third avenue, February 9, 1905. Ordered copy sent company. (Street Case No. 6—1905.)

Report of the electrical expert, dated September 6, 1905, as to a collision between trains on the Brooklyn Heights Railroad at the Culver depot, Coney

Island, August 23, 1905. Ordered copy sent company. (Street Case No. 24—1905.)

Report of the electrical expert, dated September 1, 1905, as to a rear collision between cars of the Brooklyn Heights Railroad Company on the Brooklyn bridge, August 22, 1905. Ordered copy sent company. (Street Case No. 23—1905.)

Report of the superintendent of the grade crossing bureau, dated August 29, 1905, as to a rear collision between a passenger train and a freight train on The Delaware and Hudson Company's railroad near Sidney, August 5, 1905. Ordered copy sent company. (Steam Case No. 26—1905.)

In the matter of the recommendations of this Board contained in a letter dated September 20, 1905, to the company, growing out of a rear collision between cars of The Coney Island and Brooklyn Railroad Company on Coney Island avenue, near Coney Island Creek, August 9, 1905, a letter, dated September 21, 1905, was received from the company, stating that the first recommendation would be complied with. Ordered letter written the company as to the second recommendation, as shown by copy on file. (Street Case No. 20—1905.)

In the matter of an accident on the Syracuse, Lakeside and Baldwinsville Railway, May 30, 1905, about 11:10 p. m., about one-third of a mile north of its Lakeside Park station, in which a report, dated June 9, 1905, has been made by the superintendent of the grade crossing bureau, a report, dated July 31, 1905, was received from the electrical expert, he having been instructed to also report in this matter. Ordered filed. Neither of these reports is to be sent to the company. (Street Case No. 12—1905.)

In the matter of the recommendations of this Board to the Interborough Rapid Transit Company growing out of the derailling of a Ninth avenue train on the Manhattan Railway (leased to and operated by the Interborough Rapid Transit Company) at Ninth avenue and 53d street, September 1<sup>st</sup> 1905, about 7:05 a. m., letters, dated September 29 and October 5, 1905, as to compliance with the recommendations were received from the company, the letter of October 5 stating that the recommendation as to semaphore signals, slow sign and issuance of rules would be complied with, but stating that the company does not believe it should comply with the recommendation as to trains coming to a stop. Ordered letter written the company as shown by office original on file. (Street Case No. 28—1905.)

In the matter of the recommendations of this Board contained in a letter to the company, dated November 5, 1904, as to guard rails on curves of the New Paltz, Highland and Poughkeepsie Traction Company's railroad, growing out of the derailment of a car on said railroad October 9, 1904, a report dated September 28, 1905, was received from the electrical expert, stating that guardrails for four curves have not been provided. Ordered letter written the company on the subject, as shown by copy on file. (Street Case No. 40—1904.)

Report of the inspector of grade crossings, dated September 9, 1905, as to tracks on the Lake Shore and Michigan Railway. Ordered filed. (Case No. 2888.)

Report of the inspector of grade crossings, dated September 25, 1905, as to the New York and Long Island Traction Company's railroad (electric) crossing the Jamaica and South Shore Railroad (steam) near Springfield. Ordered filed. In this matter a determination under section 68 of the Railroad Law has been made by the Board. (Case No. 3087.)

Report of the inspector of grade crossings, dated September 25, 1905, as to the New York and Long Island Traction Company's railroad (electric) crossing the Long Island Railroad (steam) at Rockville Center, Valley Stream, Springfield and Mineola. Ordered filed. In this matter a determination under section 68 of the Railroad Law has been made by the Board. (Case No. 2981.)

Report of the inspector of grade crossings, dated September 26, 1905, as to the Long Island Electric Railway crossing the Long Island Railroad (steam) about half a mile west of Queens station. Ordered filed. In this matter a determination under section 68 of the Railroad Law has been made by the Board. (Case No. 3303.)



Report of the inspector of grade crossings, dated September 27, 1905, in relation to the moving of the Hewlett station on the Long Island Railroad, in which a determination, under section 34 of the Railroad Law, that the station be moved has been made by the Board. The report is to the effect that the station has not been moved. (Case No. 2584.)

Report of the inspector of grade crossings, dated September 5, 1905, in the matter of the determination of this Board, under section 68 of the Railroad Law, that a switch track of the New York Central and Hudson River Railroad (steam) should be constructed over the Fonda, Johnstown and Gloversville Railroad (electric) on Main street, Amsterdam, at grade,—the report stating that a switch has been constructed, but that it does not cross the electric railroad. Ordered filed. (Case No. 3090.)

Report of the inspector of grade crossings, dated September 13, 1905, as to an overcrossing by the Olean Street Railway (electric) of the Pennsylvania and the Pittsburg, Shawmut and Northern railroads (steam) in East State street, Olean. Ordered filed. A determination in this matter under section 68 of the Railroad Law has been made by the Board. (Case No. 3194.)

A report of the inspector of grade crossings, dated September 13, 1905, as to a temporary crossing at grade by the railroad of The Chautauqua Traction Company (electric) of the Pennsylvania Railroad on Valley street, Mayville. Ordered filed. A determination in this matter, under section 68 of the Railroad Law, has been made by the Board. An overcrossing of the steam railroad to carry the street and electric railroad is being constructed under section 62 of the Railroad Law. (Case No. 3195.)

In the matter of the recommendations of this Board to the Ogdensburg Street Railway Company as to the physical condition of its railway, a letter, dated September 19, 1905, was received from the company as to compliance with the recommendations. Ordered that the electrical expert make another report in this matter in the future. (Case No. 2795.)

In the matter of the recommendations of this Board contained in a letter dated September 13, 1905, to the Olean, Rock City and Bradford Railroad Company as to the physical condition of its railroad, in this State, a letter dated September 19, 1905, was received from the company as to compliance with the recommendations. Ordered filed. The electrical expert is to make another report in this matter in the future. (Case No. 3196.)

In the matter of the recommendations of this Board contained in a letter dated September 13, 1905, to the Buffalo Southern Railway as to crossings of steam railroads by the Buffalo, Gardenville and Ebenezer Railway (now a part of the Buffalo Southern Railway), a letter dated September 18, 1905, was received from the company. Ordered letter written the company that the recommendations must be complied with at once. (Case No. 2325.)

In the matter of the report of the inspector, dated July 1, 1905, of his inspection of the Otis Railway, a supplementary report, dated September 23, 1905, was received from the inspector. Ordered copy of the first report and supplementary report sent the company, with a letter of recommendation as shown by office original letter on file. (No. 11—1905.)

In the matter of the report of the inspector, dated July 7, 1905, of his inspection of the Little Falls and Dolgeville Railroad, a supplementary report, dated September 23, 1905, was received from the inspector. Ordered copy of the first report and supplementary report sent the company, with a letter of recommendation as shown by office original letter on file. (No. 14—1905.)

Report of the inspector, dated September 13, 1905, of his inspection of the Brooklyn and Rockaway Beach Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 37—1905.)

Report of the inspector, dated September 16, 1905, of his inspection of the portion of the Pittsburg, Shawmut and Northern Railroad in this State. Ordered copy sent receiver of the company, with a letter of recommendation as shown by office original letter on file. (No. 42—1905.)

Report of the inspector, dated September 14, 1905, of his inspection of the Jamestown, Chautauqua and Lake Erie Railway. Ordered copy sent

company, with a letter of recommendation as shown by office original letter on file. Also ordered letter of recommendation sent the Jamestown Street Railway Company as to a crossing at grade of said railway and the steam railway, as shown by office original letter on file. (No. 41—1905.)

Report of the inspector, dated September 16, 1905, of his inspection of the portion of the New York, Chicago and St. Louis Railroad in this State. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 40—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the New York and Ottawa Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 31—1905.)

Report of the inspector, dated September 23, 1905, of his inspection of the portion of the Milford, Matamoras and New York Railroad in this State. Ordered copy sent company. (No. 30—1905.)

Report of the inspector, dated September 18, 1905, of his inspection of the Buffalo Creek Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 29—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the United States and Canada Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 32—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the Champlain and St. Lawrence Railroad. Ordered copy sent company. (No. 33—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the Lake Champlain and Moriah Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 34—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the Keeseville, Ausable Chasm and Lake Champlain Railroad. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 35—1905.)

Report of the inspector, dated September 12, 1905, of his inspection of the portion of the New York, New Haven and Hartford Railroad (main line, Harlem River and Port Chester Railroad and New England Railroad) in this State. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 36—1905.)

Report of the inspector, dated September 23, 1905, of his inspection of the Buffalo Creek Transfer Railroad. Ordered copy sent company. (No. 38—1905.)

Report of the inspector, dated September 13, 1905, of his inspection of the Niagara Junction Railway. Ordered copy sent company. (No. 39—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the portions of the Rutland Railroad in this State. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 24—1905.)

Report of the inspector, dated August 21, 1905, of his inspection of the Poughkeepsie and Eastern Railway. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. A letter dated August 26 was sent to the company by this Board, and a letter dated August 29 was received from the company, in relation to the condition of the Willow Brook trestle bridge, the company stating that the work of rebuilding this trestle bridge was under way. (No. 25—1905.)

Report of the inspector, dated August 21, 1905, of his inspection of the Unadilla Valley Railway. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 28—1905.)

Report of the inspector, dated August 22, 1905, of his inspection of the railroads operated by the Lehigh and New England Railroad in this State. Ordered copy sent company, with a letter of recommendation as shown by office original letter on file. (No. 27—1905.)

Report of the inspector, dated August 23, 1905, of his inspection of the portion of the Lehigh and Hudson River Railway in this State, and the Orange County Railroad (operated by The Lehigh and Hudson River Rail-

way Company). Ordered copy sent The Lehigh and Hudson River Railway Company, with a letter of recommendation as shown by office original letter on file. (No. 26—1905.)

In the matter of the recommendations of this Board contained in a letter dated August 25, 1905, to the Buffalo and Susquehanna Railroad Company as to the physical condition of its railroad in this State, a letter dated September 25, 1905, was received from the company stating that the recommendations had been or would be complied with. Ordered filed. (No. 21—1905.)

In the matter of the recommendations of this Board contained in a letter dated September 19, 1905, to the New York Central and Hudson River Railroad Company as to the physical condition of the Pennsylvania division of its railroad, a letter dated September 27, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 22—1905.)

In the matter of the recommendations of this Board contained in a letter dated September 19, 1905, to The Ulster and Delaware Railroad Company as to the physical condition of its railroad, a letter dated September 27, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 9—1905.)

In the matter of the recommendations of this Board contained in a letter dated September 19, 1905, to the Boston and Maine Railroad as to the physical condition of the portion of the Fitchburg division of its railroad in this State, a letter dated September 25, 1905, was received from the company stating that the recommendations had been or would be complied with. Ordered filed. (No. 8—1905.)

In the matter of the recommendation of this Board contained in a letter dated September 19, 1905, to the Glenfield and Western Railroad Company as to the physical condition of its railroad, a letter dated September 22, 1905, was received from the company stating that the recommendation would be complied with. Ordered filed. (No. 13—1905.)

In the matter of the recommendation of this Board contained in a letter dated September 19, 1905, to the Catskill Mountain Railway Company as to the physical condition of its railway, a letter dated September 24, 1905, was received from the company stating that the recommendation had been complied with. Ordered filed. (No. 12—1905.)

In the matter of the recommendation of this Board contained in a letter dated August 25, 1905, to the Kanona and Prattsburgh Railway Company as to the physical condition of its railway, letters dated August 29 and September 15, 1905, were received from the company stating that the recommendations would be complied with. Ordered filed. (No. 18—1905.)

In the matter of the recommendations of this Board contained in a letter dated August 25, 1905, to the Dansville and Mt. Morris Railroad Company as to the physical condition of said railroad, a letter dated August 31, 1905, was received from the superintendent of the railroad stating that the recommendations would be complied with. Ordered filed. (No. 17—1905.)

In the matter of the recommendation of this Board contained in a letter dated August 25, 1905, to The Lake Shore and Michigan Southern Railway Company as to the physical condition of its railway in this State, a letter dated August 29, 1905, was received from the company stating that the recommendation would be complied with. Ordered filed. (No. 16—1905.)

In the matter of the recommendation of this Board contained in a letter dated August 25, 1905, to the Genesee and Wyoming Railroad Company as to the physical condition of its railroad, a letter dated August 28, 1905, was received from the company stating that the recommendation would be complied with. Ordered filed. (No. 19—1905.)

In the matter of the recommendations of this Board contained in a letter dated August 25, 1905, to the New York and Pennsylvania Railroad Company as to the physical condition of its railroad, a letter dated August 28, 1905, was received from the company stating that the recommendations would be complied with. Ordered filed. (No. 20—1905.)

Correspondence in relation to and certificates of inspection of locomotive engine boilers were submitted to the Board. Ordered filed. (Case No. 3382.)

*Crossings.*

Application of the New York, New Haven and Hartford Railroad Company on its own behalf and on behalf of its lessor, the New England Railroad Company, under section 60 of the Railroad Law, for a determination of the manner in which a second track of the Highland division of its railroad shall cross streets, avenues and highways in the counties of Dutchess and Putnam, this second track has been partially constructed. Ordered hearing set for Wednesday, October 18, 1905, 10:30 a.m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Grade Crossing Case No. 559.)

*Orders.*

Application of The Electric City Railway Company (street surface), under section 68 of the Railroad Law, as to its railway crossing the Erie Railroad (steam) and the right of way of the Buffalo, Thousand Islands and Portland Railroad Company (steam) on Niagara street, Niagara Falls. Ordered that that part of the application which asks that a crossing at grade may be permitted temporarily be denied, and that part of the application as to crossing in an undercrossing which is to be constructed, under section 62 of the Railroad Law, at the point in question be held until the undercrossing is constructed. (Case No. 3380.)

Application of the Rochester, Syracuse and Eastern Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (double track street surface) shall cross the New York Central and Hudson River Railroad (steam) and the West Shore Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at four points, viz.:

1. The Auburn branch of the New York Central and Hudson River Railroad near Brighton station (it being proposed that the railroad of the applicant shall cross the steam railroad at this point above the grade of the steam railroad).

2. The West Shore Railroad at a point about one and one-half miles west of Fairport (it being proposed that the railroad of the applicant shall cross the steam railroad at this point below the grade of the steam railroad).

3. The New York Central and Hudson River Railroad and the West Shore Railroad (one bridge) at a point about half way between the villages of Newark and Lyons (it being proposed that the railroad of the applicant shall cross the steam railroads at this point above the grade of the steam railroads); above, below or at the grade of the steam railroads. Determination that the first crossing shall be made above the grade of the steam railroad, that the second crossing shall be made below the grade of the steam railroad, and that the third and fourth crossings shall be made across the steam railroad above grade, the expense to be borne as provided by an agreement between the companies, a copy of which is on file. (Case No. 3404.)

Application of The New York, Auburn and Lansing Railroad Company (steam-electric), under section 68 of the Railroad Law, for a determination as to whether its single track railroad shall cross the Cayuga division of the Lehigh Valley Railroad (steam) at Auburn above, below or at the grade of the steam railroad, and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company. Determination that The New York, Auburn and Lansing Railroad shall cross the Lehigh Valley Railroad above grade, the expense to be borne as provided by an agreement between the Lehigh Valley Railway Company, the Lehigh Valley Railroad Company and The New York, Auburn and Lansing Railroad Company, a copy of which is on file. (Case No. 3292.)

*Bills Approved.*

The following bills were approved:

*General Expenses.*

J. D. Shultz (August expenses).....	\$37 22
John J. Farley (expenses).....	21 00

Karl F. Colson (expenses).....	\$41 00
Charles R. Barnes (expenses).....	117 72
A. L. Judson (expenses).....	55 00
C. E. Argersinger, P. M. (P. O. Box rent).....	4 00
"Klips," E. C. Cuyler, Sec'y-Treas. (August),	\$25 00
"Klips," E. C. Cuyler, Sec'y-Treas. (Sept.)..	25 00
	<hr/>
A. M. Michael, \$11.20, \$0.20.....	50 00
Anna E. Burke (Steno. services).....	11 40
Great Bear Spring Co. (August and September)....	22 23
John R. McClellan, \$1, \$10.....	4 50
The Smith-Premier Typewriter Co., \$9.75, \$6.25....	11 00
Western Union Telegraph Co.....	16 00
Postal Telegraph Co (August).....	2 61
Postal Telegraph Co (September).....	\$6 40
	<hr/>
Brandow Printing Co.....	3 41
American Express Co. (July).....	9 81
American Express Co. (August) .....	88 99
	<hr/>
National Express Co. (July).....	21 92
National Express Co. (August).....	\$18 46
	<hr/>
Hudson River Telephone Co. (August).....	6 51
Hudson River Telephone Co. (September)..<	24 97
	<hr/>
Remington Typewriter Co.....	53 44
Thomas J. Cowell (August).....	1 17
Thomas J. Cowell (September).....	\$29 50
	<hr/>
Matthew Bender .....	39 65
Great Bear Spring Co. (N. Y. office), \$2.50, \$2.50....	69 15
New York Telephone Co. (N. Y. office).....	25 00
Geo. A. Traver, Supt. (N. Y. office), August,	5 00
Geo. A. Traver Supt. (N. Y. office), Sept....	10 10
	<hr/>
Western Union Telegraph Co. (N. Y. office).....	2 70
Economy Clean Towel Supply Co. (N. Y. office)....	2 60
Harry C. Keyes (Steno. services, N. Y. office), Sept..	5 30
Battery Place Realty Co. (N. Y. office):	6 46
September rent .....	6 00
October rent .....	100 00
	<hr/>
The American District Telegraph Co. (New York	300 00
office), September .....	1 00
	<hr/>
	\$1,121 99
	<hr/>

*Grade Crossing Expenses.*

James E. Brazee (expenses—August).....	\$44 60
James E. Brazee (expenses—September)....	63 25
	<hr/>
A. H. Sutermeister (expenses).....	\$107 85
F. E. Colwell & Co.....	45 70
W. & L. E. Gurley.....	4 24
Geo. C. Van Buren.....	6 84
	<hr/>
	9 60
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	\$174 23
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The Board adjourned.

ALBANY, OCTOBER 11, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Dickey and Aldridge.

*Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 29, 1905, on the petition of the town board of the town of East Hamburg, Erie county, as to changing a grade crossing of the Buffalo, Rochester and Pittsburg Railway in said town by a highway known as the Buffalo road, situated at a point between Big Tree road and Deuel's Corners, from grade to an undercrossing, the determination being that an undercrossing shall be constructed, a letter dated September 2, 1905, was received from the company asking that it might do the work itself without calling for proposals of contractors. Ordered letters written the company that the Board approves of it so doing the work itself, except that proposals of contractors for the bridge must be submitted here. (Grade Crossing Case No. 419.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, detail plans for the masonry at Union street were submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated September 12, 1905, from the superintendent of the grade crossing bureau. Ordered said detail plans approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, a plan for the Fonda street crossing showing changes in the masonry from a plan approved by this Board on March 30, 1905, for the Fonda street crossing, was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated October 2, 1905, from the superintendent of the grade crossing bureau. Ordered the change in the masonry shown on said plan approved. Copies of this plan bearing the approval of the local authorities were not submitted to the Board, the changes being only in relation to the arrangement of the backwall of the abutments, and no endorsement of approval by this Board other than that of March 30, 1905, is made on the plan submitted to the Board on this date. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, metal layout plans for the bridge at State street were submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated August 10, 1905, from the superintendent of the grade crossing bureau, the plans showing a proposed change in the revised approved general plan as stated in the said report. Ordered said plans approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, detail plans for the retaining wall between State and Liberty streets was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated October 10, 1905, from the superintendent of the grade crossing bureau. Ordered said detail plan approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, detail plans for the masonry at North Center street (Center street) was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated October 7, 1905, from the superintendent of the grade crossing bureau. Ordered said detail plans approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, plan showing proposed wheel guards along curb walls at those undercrossings where the sidewalks are elevated above the roadway was submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated October 10, 1905, from the superintendent of the grade crossing bureau. Ordered said plan approved. (Grade Crossing Case No. 369.)

A report (by direction of the Board), dated October 6, 1905, was submitted to the Board by the superintendent of the grade crossing bureau in relation to the Harlem avenue grade crossing of the yards of the Delaware, Lackawanna and Western Railroad and the main lines of the Erie and Lehigh Valley railroads and the Kennedy avenue grade crossing of said railroads in East Buffalo, the Harlem avenue crossing being in Sloan, Erie county, and the Kennedy avenue crossing being in the town of Cheektowaga, Erie county. Ordered letter written the attorneys of the Delaware, Lackawanna and Western Railroad Company in relation to this report. (Filed with miscellaneous pending receipt of petition under section 62 of the Railroad Law.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated May 2, 1902, as to changing the Westerlo turnpike grade crossing of the West Shore Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) in the town of Coeymans, Albany county, to an undercrossing, an accounting and settlement of the cost between the company and the town was submitted to the Board, together with a report thereon, dated August 30, 1905, from the superintendent of the grade crossing bureau. Ordered that the State's proportion of the cost, viz., \$5,020.05, be paid to the New York Central and Hudson River Railroad Company. (Grade Crossing Case No. 331.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings of said railroad, a detail plan was submitted to the Board by The Delaware and Hudson Company showing an opening at the Nott street undercrossing for the use of the American Locomotive Company, a plan for which opening has not been heretofore approved by this Board, together with reports thereon, dated July 26, 1905, and September 18, 1905, from the superintendent of the grade crossing bureau. In a letter to this Board, dated July 25, 1905, from James MacMartin chief engineer of The Delaware and Hudson Company, it is stated that the American Locomotive company is to bear the entire additional cost due to this opening at this crossing. Ordered said plan approved on condition that the American Locomotive Company shall bear the entire additional cost of this opening and that there shall be no additional cost at the crossing due to said opening over the original approved plans to the State, the city of Schenectady or the railroad company. (Grade Crossing Case No. 390.)

#### *Hearings.*

Adjourned hearing in the matter of the application of the Ticonderoga Union Terminal Railroad Company (street surface) for a certificate under section 59 of the Railroad Law. Holmes, Bryan & Holmes for the applicant; F. T. Locke, H. J. Belden and others appeared in favor of the application;

L. E. Carr for The Delaware and Hudson Company, in opposition. After hearing evidence and arguments the hearing was adjourned until Thursday, November 9, 1905, 10 a. m., at the office of the Board in Albany. (Case No. 3395.)

In the matter of the temporary crossing at grade by the Hudson Valley Railway Company's railroad (street surface electric) of the railroad operated by The Delaware and Hudson Company in Broadway in the village of Fort Edward, which matter was set for hearing to-day, L. E. Carr, for the Delaware and Hudson Company, stated that he had agreed with the attorney for the Hudson Valley Railway Company that this matter should be postponed indefinitely, with the understanding that an application might be made by either of the companies upon thirty days' notice to the other for the setting of a date. The Board consented to this. (Case No. 2685.)

The adjourned hearing in the matter of the application of the Auburn and Syracuse Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface) shall cross the Lehigh Valley Railroad (steam, three tracks) at West Genesee street in the city of Auburn above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company, which was to have been held to-day, was postponed by consent of counsel to a date to be thereafter fixed. (Case No. 3405.)

The adjourned hearing in the matter of the application of the Auburn and Northern Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface) shall cross the Lehigh Valley Railroad (steam, single track) at State street in the city of Auburn above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company, which was to have been held to-day, was postponed by consent of counsel to a date to be thereafter fixed. (Case No. 3406.)

The adjourned hearing in the matter of the application of the New York City Interborough Railway Company (street surface electric), under section 68 of the railroad law, for a determination as to how its railway shall cross the New York and Harlem Railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at One Hundred and Eightieth street, borough of the Bronx, New York city, it being proposed that said street surface railway shall cross said steam railroad on an existing bridge, and as to proportion of expense to be borne by the steam railroad and the electric railway companies, which was to have been held to-day, was adjourned by consent of counsel to a date to be thereafter fixed. (Case No. 3399.)

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, a report dated October 7, 1905, was received from the superintendent of the grade crossing bureau as to increased cost of the work due to change of plans. Ordered filed. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, supplemental specifications for the superstructural portion of the work were submitted to the Board by the New York Central and Hudson River Railroad Company. Ordered said supplemental specifications approved. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated June 14, 1904, as to the Buffalo and Susquehanna Railway crossing streets, avenues and highways in the county of Wyoming, and



modified determination, dated July 8, 1904, that the Hardville road highway in the town of Arcade shall cross over the grade of said railway instead of the railway passing over the grade of the highway, a letter dated August 30, 1905, was received from the supervisor of the town of Arcade as to the bridge to carry the highway, together with a report thereon, dated September 19, 1905, in the matter from the superintendent of the grade crossing bureau. Ordered that the town be notified that the Board will not interfere in the matter further than to recommend to the company that fences be built on top of the girders of the bridge to shut off the view of trains, and ordered said recommendation made to the company. (Grade Crossing Case No. 480.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna Railway crossing streets, avenues and highways in the county of Erie, a petition was received from the town board and acting commissioners of highways of the town of Concord asking for a modification of the determination so that the Morse road highway shall be carried over the railway on a bridge instead of the railway crossing said highway at grade. Ordered hearing set on said petition for Tuesday, December 5, 1905, 12 m., at the Iroquois Hotel, Buffalo, and the company be notified not to proceed with the work of crossing this highway at grade. (Grade Crossing Case No. 478.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing, a plan showing a retaining wall along the east side of North Union street, on the north side of the railroad, together with an estimate of increased cost for said retaining wall amounting to three thousand seven hundred dollars (\$3,700), were submitted to the Board by the company, together with a report thereon, dated October 2, 1905, from the superintendent of the grade crossing bureau. Ordered said plan and estimate approved. In this matter there was also submitted to the Board by the company plans showing proposed work at Augusta street and Augusta street closed, together with a report thereon, dated September 23, 1905, from the superintendent of the grade crossing bureau, and correspondence, and estimate signed by the German-American Button Company, the railroad company and the city engineer, the proposition being that Augusta street shall be closed and the adjoining parallel street (Lewis street) shall be opened from Prince street to the southerly approach to the subway at North Union street; portions of Alexander street and Prince street north of Lewis street are also to be closed; the entire cost of the changes, including the opening, grading and paving of Lewis street, to be paid for by the German-American Button Company and that company to receive the sum of one thousand and thirty-nine dollars and five cents (\$1,039.05), estimated to be the unexpended balance of cost for the improvement of Augusta street, if Augusta street were improved, as shown by the first approved plan; said sum of one thousand and thirty-nine dollars and five cents (\$1,039.05) to be chargeable to the total cost of the work, of which the State will bear one-quarter, the city one-quarter and the railroad company one-half. Ordered said proposition disapproved. (Grade Crossing Case No. 416.)

In the matter of the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Palmyra and Walworth road highway grade crossing of the West Shore Railroad, its lessor, near Palmyra, in the town of Macedon, Wayne county, and the construction of a new piece of highway to an existing undercrossing of the railroad, a letter dated September 21, 1905, was received from the company to the effect that "I think it doubtful under the decision in the town of Colesville case, whether the Board of Railroad Commissioners has any jurisdiction in this matter" and stating that the work involved in the petition had been done and asking permission to withdraw the petition. Ordered permission to withdraw the petition granted. (Grade Crossing Case No. 484.)

Petition of the Terminal Railway of Buffalo and the Lehigh Valley Railroad Company, joined, under section 60 of the Railroad Law, for a determination as to how a track to connect the Terminal Railway and the Depew and Tona-

wanda branch of the Lehigh Valley Railroad in the village of Depew shall cross the Ellicott road highway. Ordered hearing set for Tuesday, December 5, 1905, 2 p. m., at the Hotel Iroquois, Buffalo. (Grade Crossing Case No. 560.)

Application of the Erie Railroad Company, under section 60 of the Railroad Law, for a determination as to how an extension of its railroad shall cross State street in Binghamton. Ordered hearing set before Commissioner Dunn at his office in Binghamton, Saturday, October 28, 1905, 10 a. m. (Grade Crossing Case No. 562.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 14, 1905, as to the closing and discontinuance of three grade crossings of the New York Ontario and Western Railway near the Crystal Run station on said railway in the town of Wallkill, Orange county, and the construction of new pieces of highway and one overhead bridge crossing of said railway, original tracings of the plans for this work were submitted to the Board by the company, together with a report thereon from the superintendent of the grade crossing bureau, dated October 10, 1905. Ordered approved and indorsement of such approval made on the original tracings and they be returned to the company. In this case the substructural work is to be done by the company itself; the proposals of contractors for the bridge will be submitted to the Board. (Grade Crossing Case No. 459.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the Ionia and East Bloomfield road highway grade crossing of the New York Central and Hudson River Railroad in the town of West Bloomfield, Ontario county, and the construction of a new piece of highway and an undercrossing of said railroad, a report dated September 7, 1905, was received from the inspector of grade crossings as to the completed work. Ordered completed work approved. (Grade Crossing Case No. 396.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 19, 1904, and modified determination, dated September 29, 1904, as to the construction of an undercrossing for pedestrians of the New York Central and Hudson River Railroad at Main street, Herkimer, a report dated September 25, 1905, was received from the superintendent of the grade crossing bureau as to the completed work. Ordered completed work approved. (Grade Crossing Case No. 498.)

In the matter of the determination of this Board, under section 61 of the Railroad Law, dated October 24, 1902, and modified determinations dated October 8, 1903, and November 30, 1904, as to Center avenue crossing the New York, New Haven and Hartford Railroad, main line, above grade, and as to Webster avenue crossing said railroad, main line, and the Harlem River and Port Chester branch beneath grade in New Rochelle, a report dated August 31, 1905, was received from the inspector of grade crossings as to the work. Ordered filed. (Grade Crossing Case No. 332.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, as to changing the Broadway grade crossing of the New York and Putnam division of the New York Central and Hudson River Railroad at Van Cortlandt station, New York city, from grade to an undercrossing of the railroad, a report dated August 31, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 503.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated July 8, 1904, as to the closing of the Van Anden street grade crossing of the New York Central and Hudson River Railroad in Auburn and the construction of new pieces of streets, a report dated September 6, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 470.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated September 13, 1904, as to changing the North Union street, Rochester, grade crossing of the New York Central and Hudson River Railroad to an undercrossing of the railroad, a report dated September 8, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 416.)

In the matter of the determination of this Board, under section 61 of the Railroad Law, dated March 30, 1905, as to Fourteenth street in Elmira Heights crossing the Lehigh Valley Railroad at grade, a report dated September 15, 1905, was received from the inspector of grade crossings. Ordered filed. (Grade Crossing Case No. 526.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, as to the Lockport and Olcott Railway (now International Railway) crossing highways in the town of Lockport and Newfane, Niagara county, a report dated September 12, 1905, was received from the inspector of grade crossings. Ordered letter written International Railway Company, as shown by office original on file. (Grade Crossing Case No. 267.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 25, 1904, as to the Chautauqua road or Valley street grade crossing of the Pennsylvania Railroad in the village of Mayville being changed to an overcrossing, a report dated September 13, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 491.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated January 3, 1905, as to the Pittsburg, Shawmut and Northern Railroad crossing streets, avenues and highways in the counties of Allegany and Cattaraugus, a report dated September 14, 1905, was received from the inspector of grade crossings and the superintendent of the grade crossing bureau as to the completed work. Ordered completed work approved. (Grade Crossing Case No. 502.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn street grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, reports dated September 1 and October 7, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 390.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River Railroad and the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, reports dated September 1 and October 7, 1905, were received from the superintendent of the grade crossing bureau as to the progress of the work. Ordered filed. (Grade Crossing Case No. 369.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated December 2, 1903, as to a second track of the New York, Ontario and Western Railway crossing streets, avenues and highways in the county of Orange, a report dated September 23, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 445.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated November 5, 1903, as to a second track of the New York, Ontario and Western Railway crossing streets, avenues and highways in Delaware county, a report dated September 23, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 446.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated November 5, 1903, as to a second track of the New York, Ontario and Western Railway crossing streets, avenues and highways in Sullivan county, a report dated September 23, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 447.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 9, 1904, as to the closing and discontinuance of a grade crossing of the New York, Ontario and Western Railway near its Rock Tavern station in the town of New Windsor, Orange county, a report dated September 28, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 488.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 14, 1905, as to the closing of two highway grade crossings of the New York, Ontario and Western Railway at Stony Ford in the town of Wallkill, Orange county, and the construction of an overhead crossing of the railway between the two, a report dated September 28, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 442.)

#### *Orders.*

Petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Martin highway grade crossing, the Mott highway grade crossing and the Bussey highway grade crossing (the first two being by the same highway at different points) of said company's railway and the construction of a new piece of highway and an overhead crossing of said railway in the town of Rockland, Sullivan county, near Livingston Manor. Determination, as shown by office original determination on file, that said crossings shall be closed and new piece of highway and overhead crossing of the railway constructed. A protest in this matter from A. M. Scriber was submitted to the Board at this meeting. (Grade Crossing Case No. 462.)

Petition of the New York, Ontario and Western Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of its railway by the highway known as the Centerville road at the Centerville station on said railway in the town of Fallsburg, Sullivan county, and the construction of new pieces of highway and an overhead bridge crossing of the railway. Denied. (In this matter George H. Smith, who appeared for the town board in opposition at the hearing on July 19, 1905, had the option of further appearing—see minutes of September 12, 1905—but did not desire to appear further. (Grade Crossing Case No. 458.)

Application of the town board of the town of Hunter, Greene county, under section 61 of the Railroad Law, for a determination as to whether an extension of a highway in said town shall cross the Ulster and Delaware Railroad over, under or at the grade of said railroad. Determination that the crossing shall be made at grade, as shown by office original determination on file. (Grade Crossing Case No. 555.)

Application of the village of Lyons Falls, under section 61 of the Railroad Law, for a determination as to whether a continuation of Charlotte street in said village shall cross the Utica and Black River Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. Determination, as shown by office original determination on file, that the crossing shall be over the grade of the railroad. (Grade Crossing Case No. 544.)

Application of the city of New York, under section 61 of the Railroad Law, for a determination as to whether East One Hundred and Sixty-seventh street in the borough of the Bronx, said city, shall cross the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company) over, under or at the grade of said railroad. Determination, as shown by office original determination on file, that a portion of said street for foot passengers only shall cross said railroad over the grade of the railroad. (Grade Crossing Case No. 529.)

In the matter of the division of expense between the Delaware, Lackawanna and Western Railroad Company and the New York Central and Hudson River Railroad Company of said companies' share of the cost of the Willis avenue overcrossing of the Oswego and Syracuse Railroad (leased to and operated by the Delaware, Lackawanna and Western Railroad), the West Shore Railroad, lessor, and the New York Central and Hudson River Railroad, it was ordered that the Board refuse the application of the Delaware, Lackawanna and Western Railroad Company for a modification of the determination of the Board, dated January 12, 1905, as to the division of this expense. (Grade Crossing Case No. 174.)

The Board adjourned.

NEW YORK, OCTOBER 18, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Dickey and Aldridge.

Application of the New York, New Haven and Hartford Railroad Company on its own behalf and on behalf of its lessor, the New England Railroad Company, under section 60 of the Railroad Law, for a determination by the Board of the manner in which a second track of the Highland division of its railroad shall cross streets, avenues and highways in the counties of Dutchess and Putnam. William Greenough for the applicant; Lewis H. Wright, supervisor, appeared for the town of East Fishkill, Dutchess county; C. A. Fowler, engineer of Dutchess county, appeared particularly in relation to crossings in the town of East Fishkill, Dutchess county; Henry A. Holmes, supervisor, appeared for the town of Pawling, Dutchess county; Henry Mayble, supervisor, appeared for the town of Patterson, Putnam county. After hearing evidence and arguments as to crossings numbered from 1 to 13½, inclusive (at which point the hearing stopped), the hearing was adjourned until Wednesday, November 15, 1905, 12 m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Grade Crossing Case No. 559.)

R. J. Caldwell of Brooklyn appeared before the Board in relation to protection at curves and as to protection of the third rail electric on the elevated lines of The Brooklyn Heights Railroad Company. The electrical expert made a verbal report in this matter and is to consult with Mr. Caldwell and make a written report. H. D. Dumont of The Merchants' Association of New York also appeared in this matter. (Case No. 3433.)

The Board adjourned.

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ELMIRA, OCTOBER 24, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn and Baker (by delegation of the Board).

*Hearings.*

Adjourned hearing in the matter of the application of the Elmira, Corning and Waverly Railway for a certificate under section 59 of the Railroad Law. Charles A. Collin and Thomas O'Connor for the applicant; Boyd McDowell for the Chemung Valley Traction Company, in opposition; F. A. Collin for the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company. Without the taking of evidence or the hearing of arguments the hearing was adjourned until Tuesday, November 28, 1905, 10 a. m., at the Rathbun House, Elmira. (Case No. 3412.)

*Bill Approved.*

The following bill was approved:

*General Expenses.*

W. McNeilly (postage stamps)..... \$100 00

The Board took a recess until 1 p. m.

AFTER RECESS—1 P. M.

The Board again met. Present, Commissioners Dunn, Baker and Aldridge.

*Hearings.*

Application of The Tunesassa and Bradford Railroad Company for a certificate under section 59 of the Railroad Law. Cary, Rumsey & Hastings (Mr. Hastings appearing) for the applicant; no one else appeared. After hearing evidence and arguments the hearing was closed. (Case No. 3425.)

*Crossings.*

Application of the Tunesassa and Bradford Railroad Company, under section 60 of the Railroad Law, for a determination of the manner in which its railroad shall cross streets, avenues and highways in the towns of Red House and Elko in the county of Cattaraugus. Ordered hearing set for Friday, November 10, 1905, 11 a. m., at the office of the Board in Albany. (Grade Crossing Case No. 566.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated June 14, 1904, as to the closing and discontinuance of the Croton and Drewsville road highway grade crossing of the New York and Putnam division of the New York Central and Hudson River Railroad Company in the town of Carmel, Putnam county, at a point known as Light's crossing, and the construction of new pieces of highway and an overhead crossing of said railroad, a letter dated September 7, 1905, was received from the company asking that it might do the work itself without calling for proposals of contractors. Ordered letter written the company that the Board approves of it doing the work itself, except that the proposals of contractors for the bridge must be submitted here. (Grade Crossing Case No. 398.)

The Board adjourned.

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BINGHAMTON, OCTOBER 28, 1905.

Hearing before Commissioner Dunn (by delegation of the Board) in the application of the Erie Railroad Company, under section 60 of the Railroad Law, for a determination by this Board as to how an extension of its railroad in the city of Binghamton shall cross State street in said city, it being proposed that the crossing shall be made on an overhead bridge or structure. Lyon & Painter (Mr. Painter appearing) for the applicant; no one else appeared. After hearing arguments the hearing was closed. (Grade Crossing Case No. 562.)

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NEW YORK, OCTOBER 31, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Hearings.*

Adjourned hearing in the matter of the petition of the mayor and common council of the city of Mt. Vernon and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad law, as to the closing and discontinuance of the Mt. Vernon avenue, Oak street and Fleetwood avenue grade crossings of the New York and Harlem Railroad (leased to and operated by the New York Central and Hudson River Railroad Company), it being proposed that the Mt. Vernon avenue and Oak street crossings shall be changed to undercrossings of the railroad and that the Fleetwood avenue crossing of the railroad shall be changed to an overcrossing of the railroad, it being also proposed that South or Mechanic street (now called Bradley street—in New York city, near the Mt. Vernon city line) shall be taken across said railroad in an undercrossing. Isaac N. Mills and William A. Miles for the city of Mt. Vernon; C. C. Paulding for the New York Central and Hudson River Railroad Company; F. A. Stratton for the Westchester Lighting Company; O. Hufeland for the Fourth Ward Taxpayers' Association

of Mt. Vernon; John C. Hune for the city of New York; Francis A. Winslow, corporation counsel, and Samuel L. Cooper, commissioner of public works, for the city of Yonkers. Mr. Winslow and Mr. Cooper appeared in relation to a bridge over the Bronx river which in this improvement is to be moved by the company at the company's own expense from its present location in Mt. Vernon to a location crossing the Bronx river. After hearing arguments the evidence was closed but the matter was held open. (Grade Crossing Case No. 545.)

Adjourned hearing in the matter of the petition of the mayor and common council of the city of Yonkers and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pier street, Fernbrook street, Dock street, Wells avenue and Ashburton avenue grade crossings of said company's railroad, the changing of the present overgrade crossing of said company's railroad by Main street to an undercrossing, the raising of the present Vark street and Babcock place overcrossings of said railroad, it being proposed that the travel from the Pier street and Fernbrook street crossings shall be diverted by the construction of a new piece of highway on the westerly side of said railroad and by the existing Bridge street on the easterly side of said railroad to an overhead crossing of said railroad proposed to be constructed at a point about 105 feet south of the present Fernbrook street grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Wells avenue grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Ashburton avenue grade crossing of said railroad. Francis A. Winslow for the city of Yonkers; Ira A. Place, A. H. Harris and C. C. Paulding for the New York Central and Hudson River Railroad Company; F. A. Stratton and Sherman & Sterling (Mr. Breed appearing) for the Westchester Lighting Company; Arnstein & Levy for John D. Karst, in opposition; Augustus N. Hand specially for Mrs. Anna Ludlow Winters, a property owner. After hearing arguments the evidence was closed but the matter was held open. Subsequently James B. Ludlow, an attorney and property owner, Lavinia Lally, an attorney and property owner, and Thomas Murphy, a property owner, who have heretofore entered appearances in this case, appeared before the Board (Col. Dunn not being present) and asked that the hearing be reopened so that they may be heard further in the matter and present further evidence, and the Board after consideration reopened the hearing and adjourned the hearing until Thursday, November 16, 1905, 10:30 a. m., at the New York office of the Board, room 406, Whitehall building, 17 Battery place, New York city. (Grade crossing Case No. 533.)

#### *Orders.*

Application of the The Tunesassa and Bradford Railroad Company (steam) for a certificate under section 59 of the Railroad Law. Granted. (Case No. 3425.)

Application of the Erie Railroad Company, under section 60 of the Railroad Law, for a determination by this Board as to how an extension of its railroad in the city of Binghamton shall cross State street in said city. Determination, as shown by office original determination on file, that the said extension of said railroad shall cross State street above the grade of said State street. (Grade Crossing Case No. 562.)

The Board adjourned.

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ALBANY, NOVEMBER 9, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

The minutes of the meetings of October 10, 11, 18, 24, 28 and 31 were read and approved.

*Hearings.*

Adjourned hearing in the matter of the application of the Ticonderoga Union Terminal Railroad Company (street surface) for a certificate under section 59 of the Railroad Law. Holmes, Bryan & Holmes for the applicant; L. E. Carr for the Delaware and Hudson Company, in opposition. After hearing evidence and arguments the evidence was closed. (Case No. 3395.)

Petition of the town board of the town of Bethlehem, Albany county, under section 62 of the Railroad Law, as to changing the Rockefeller road highway grade crossing of the railroad operated by The Delaware and Hudson Company near Normansville in said town to an overcrossing. it being proposed at this hearing that the overcrossing shall be over a cut on the railroad, the highway to be diverted. E. J. Bedell, supervisor, and other members of the town board, for the town; L. E. Carr for The Delaware and Hudson Company, in favor of the petition. After hearing evidence and arguments the evidence was closed but the matter was held open. A detail plan for the work is to be submitted to the town board by the company and if approved by the town board filed here. (Grade Crossing Case No. 505.)

E. A. Bedell against the Albany and Hudson Railroad Company as to service rendered the public. Mr. Bedell and Samuel B. Coffin appeared for complainant; R. J. LeBoeuf, attorney, and George G. Blakeslee, second vice-president and general manager, appeared for the company. After hearing evidence and arguments the hearing was adjourned until Tuesday, December 12, 1905, at ten o'clock a. m. at the office of the Board in Albany. Within ten days the company is to file with the Board statements of the operation of cars and the number of passengers carried and Mr. Bedell is also to file with the Board statements on this subject. (Case No. 3402.)

A recess was taken until two p. m.

**AFTER RECESS—2 P. M.**

The Board again met. All the Commissioners present.

*Hearings.*

Adjourned hearing in the application of the Rutland Railroad Company, under section 34 of the Railroad Law, for consent of this Board to the discontinuance of the station of said company at West Lebanon, it being proposed that another station be established and maintained at a point known as Adams crossings. P. M. Meldon for the applicant; Rockefeller & Holsapple (Mr. Rockefeller appearing) for residents of New Lebanon, in favor of the application; W. E. Woollard for residents of the town of West Lebanon, in opposition to the application. After hearing arguments the hearing was closed. (Case No. 3367.)

Adjourned hearing in the matter of the application of the Keeseville, Ausable Chasm and Lake Champlain Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad shall cross the New York and Canada railroad (leased to and operated by the Delaware and Hudson Company) at Port Kent, above, below or at the grade of said last named railroad. Thomas O'Connor for the applicant; Lewis E. Carr for the Delaware and Hudson Company and the New York and Canada Railroad Company, in opposition to a crossing at grade. After hearing evidence and arguments the hearing was adjourned until Tuesday, December 12, 1905, at two o'clock p. m. at the office of the Board in Albany. The superintendent of the grade crossing bureau in this department and Mr. MacMartin, chief engineer of The Delaware and Hudson Company, and Mr. Powers, president of the Keeseville, Ausable Chasm and Lake Champlain Railroad Company, are to meet at Port Kent in relation to a crossing other than at grade. (Case No. 3315.)



*Bills Approved.*

The following bills were approved:

*General Expenses.*

Wm. McNeilly, (expenses) .....	\$5 50
J. D. Shultz, (expenses) .....	62 50
Karl F. Colson, (expenses) .....	16 25
National Express Co., Sept., \$20.63; October., \$21.59..	42 22
American Express Co., Sept., \$11.23; Oct., \$17.02....	28 25
The Railroad Gazette.....	4 20
"Klips," E. C. Cuyler, secretary-treasurer.....	25 00
Western Union Telegraph Co.....	2 46
Postal Telegraph-Cable Co.....	3 32
Hudson River Telephone Co.....	16 72
The Smith Premier Typewriter Co., \$50; \$36.85....	86 85
Remington Typewriter Co.....	5 00
John R. McClellan.....	10 20
Rogers, Ruso & Kelly.....	4 00
J. B. Lyon Co.....	6 00
Brandow Printing Co.....	42 92
M. Agnes McMahon, (stenographer's services) .....	15 35
Yawman & Erbe Manufacturing Co.....	244 50
A. M. Michael.....	3 85
H. Dayton Ball.....	8 00
Great Bear Spring Co.....	2 10
Harry C. Keyes, (stenographer's services), New York office .....	125 00
Battery Place Realty Co., (November rent), New York office .....	150 00
New York Telephone Co., New York office.....	9 30
Wm. McNeilly, (postage stamps) .....	150 00
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	\$1,069.49
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*Grade Crossing Expenses.*

A. H. Sutermeister, (expenses) .....	\$19 60
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*Grade Crossings—Construction Account.*

The New York Central and Hudson River Railroad Company .....	\$5,020 05
For the State's proportion of the cost of changing the Westerlo turnpike crossing of the West Shore railroad in the town of Coeymans, Albany county, to an undercrossing, in pursuance of a determina- tion of this Board, under section 62 of the Railroad Law, dated May 2, 1902.	

The Board adjourned.

ALBANY, NOVEMBER 10, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker, Dickey and Aldridge.

*Complaints.*

The matter of direction to the electrical expert as to report on transportation conditions on street surface and elevated railroads in Manhattan and the Bronx was closed. (Case No. 3284.)

The matter of the petition of the Brooklyn Union Elevated Railroad Company (leased to and operated by the Brooklyn Heights Railroad Company), under section 68 of the Railroad Law, as to an existing crossing at grade of said company's railroad (Old Sea View Elevated railroad) and the Coney Island and Brooklyn railroad (street surface) in which a hearing was held by this Board on May 23, 1905, was closed, the petitioner not having proceeded further. It may be reopened upon application by the petitioner. (Case No. 3332.)

The matter of the application of the Buffalo, Dunkirk and Western Railroad Company (street surface electric), under section 68 of the Railroad Law, for a determination as to whether its railroad shall cross the Western New York and Pennsylvania railway (steam—leased to and operated by the Pennsylvania Railroad Company) above, below or at the grade of the steam railroad (it being proposed that the crossing shall be made above grade on an existing highway bridge) at a point in the town of Portland, Chautauqua county, between the villages of Brocton and Portland, was closed, the petitioner not having proceeded further. It may be reopened upon application by the petitioner. (Case No. 2992.)

The matter of the complaint of Christopher W. Riley and others against the United Traction Company and the Cohoes Railway Company as to service rendered the public, was closed, the petitioners not having proceeded further. See minutes of June 15, 1905. (Case No. 3354.)

The matter of the Merchants' Association of New York in relation to existing conditions of passenger transportation in New York city (Manhattan and the Bronx), was closed, the petitioners not having proceeded further. (Case No. 3161.)

The matter of the complaint of the Taxpayers' Nonpartisan Association of the Third Ward, borough of Queens, New York city, against the New York and Queens County Railway Company as to the operation of through cars to College Point, was closed. (Case No. 3365.)

The matter of the Allied Civic Associations of the Fourth Ward, borough of Queens, New York city, against the Brooklyn Heights Railroad Company as to service rendered the public to Jamaica, also in connection with transfers from the elevated railroad line of the company to the surface line of the company, was closed. (Case No. 3271.)

The matter of the complaint of the Republican Union of the Twenty-eighth Assembly District, New York city, against the Interborough Rapid Transit Company as to service rendered the public on the Second and Third avenue railroads, New York city, was closed. (Case No. 3268.)

The matter of John B. Rose against the West Shore railroad (leased to and operated by the New York Central and Hudson River Railroad Company) as to the erection of a station building as Roseton on the river division of the West Shore railroad, was closed. (Case No. 2890.)

The matter of Bayer & McConihe was closed. (Case No. 3333.)

The matter of the complaint of the common council of the city of Yonkers as to service rendered the public by the Yonkers Railroad Company was closed. (Case No. 3301.)

The matter of the complaint of R. J. Caldwell as to protection at curves and as to protection of the third rail electric on the elevated lines of the Brooklyn Heights Railroad Company was closed. (Case No. 3433.)

The matter of the complaint of residents of Atlanta against the Erie Railroad Company as to lack of station on said company's railroad at that place, was closed, a new station having been constructed. (Case No. 3219.)

The matter of George W. Jump & Company against the Central New England railway was closed. (Case No. 3335.)

H. P. Crouse against the Utica and Mohawk Valley Railway Company as to warning bell and arc light at the crossing of Clinton street, Whitesboro. by said company's railway. Letter, dated October 10, 1905, received from complainant. Letter, dated October 14, 1905, received from the company. Ordered filed. (Case No. 2933.)

Christopher Clark against the New York and Queens County Railway as to service rendered the public on its Flushing-Jamaica line. Ordered that the inspector of grade crossings report in this matter. (Case No. 3222.)

Joseph Beihlf against the Interborough Rapid Transit Company, alleging that the company has taken no steps to comply with the provisions of chapter 636 of the Laws of 1905 relative to the construction of an elevated station at the corner of One Hundred and Thirtieth street and Eighth avenue, New York city. Copy sent company. Answer of company received. Copy sent complainant. Closed. (Case No. 3439.)

Ogilvy Robertson against the Brooklyn Heights Railroad Company as to rate of speed of freight cars of said company on Thirty-ninth street, Brooklyn. Copy sent company. The electrical expert has been instructed to make a report in this matter. (Case No. 3450.)

E. A. Tredwell against the Long Island Railroad Company as to alleged overcharge in payment of passenger fares from East New York to Jamaica. Copy sent company. Answer of company received, stating that it would refund the complained of overcharge. Copy sent complainant. Reply of complainant received, alleging other matters of complaint. Ordered copy sent company. (Case No. 3442.)

Walter C. Rayment of Brooklyn against the Brooklyn Heights Railroad Company in relation to the operation of a car on the Calvary cemetery line of said company's railroad after 12 a. m. Letter, dated October 31, 1905, received from company, stating that additional cars leaving Greenpoint Ferry at 12:45 a. m. and 1:15 a. m. are being operated. Copy sent complainant. Closed. (Case No. 3414.)

F. W. Parks against The Delaware and Hudson Company and the New York, Ontario and Western Railway Company as to non-connection of passenger trains of said company at Sidney. Copies sent companies. (Case No. 3446.)

Olean Street Railway Company against the Pittsburg, Shawmut and Northern Railroad Company as to manner of operating the railroad of the last named company under this bridge used by cars of the Olean Street Railway Company in East State street, Olean. Copy sent company. Answer of company received. Copy sent complainant. Reply of complainant received. Closed. (Case No. 3431.)

George C. Hills against the Brooklyn Heights Railroad Company as to the locking of rear doors of cars in trains at the Thirty-sixth street station arriving from Bath Beach or Seventy-fourth street, Brooklyn. Copy sent company. Answer of company received, stating that the doors would be unlocked. Copy sent complainant. Closed. (Case No. 3437.)

The Board of Public Works of the city of Corning against the New York Central and Hudson River railroad and the Corning and Painted Post street railway as to condition of highway bridge over the steam railroad used by cars of the street railway company. A report as to this bridge, dated October 26, 1905, was made by the superintendent of the grade crossing bureau. Copy of the complaint and the report sent both companies. (Case No. 3444.)

C. W. Bly of Pittsford, Monroe county, in relation to construction of a steam railroad along public highways in the towns of Pittsford and Perinton, said railroad being used by contractors in the construction of the Monroe County Belt Line Company's electric railroad. A report, dated October 21, 1905, was received from the electrical expert. Letter, dated October 21, 1905, received from complainant. Closed. (Case No. 3438.)

Joseph M. Wilcox, of Hoosick Falls against the Rutland Railroad Company as to fence of said company along his farm. Answer of company received. Copy sent complainant. (Case No. 3392.)

William A. Lapp and others of Stephentown against the Rutland Railroad Company as to fences along complainants' lands. Answer of company received. Copy sent complainants. (Case No. 3417.)

William H. Allen against the Rutland Railroad Company as to fence of that company along his land and as to farm crossing. Letter, dated October 23, 1905, received from the company stating that the fence and farm crossing has been constructed. Copy sent complainant. Closed. (Case No. 3420.)

S. H. Richmond against the Rutland Railroad Company as to fence of that company along his farm. Letter, dated October 30, 1905, received from the company. Letter, dated October 24, 1905, received from complainant, stating that the fence has been repaired. Closed. (Case No. 3413.)

H. W. Wright and C. W. Spencer of New Lebanon against the Rutland Railroad Company as to lack of fence of that company along complainants' farms. Letter, dated November 4, 1905, received from complainant Spencer, stating that the fence is completed. Letter, dated November 9, 1905, received from company stating that the fences of both complainants have been erected. Ordered filed. Closed. (Case No. 3421.)

W. H. Harrison of Lebanon Springs against the Rutland Railroad Company as to condition of fence of that company along his farm. Copy sent company. Answer of company received. Copy sent complainant. (Case No. 3440.)

Caleb Bentley of Berlin against the Rutland Railroad Company as to farm crossing. Letter, dated November 3, 1905, written company. (Case No. 3436.)

B. W. Dinamore against the New York City Railway Company as to noise made by cars of that company on Amsterdam avenue, New York city. Closed. (Case No. 3377.)

Edward Livingston, of Highlands station, Putnam county, against the New York Central and Hudson River Railroad Company as to alleged overcharge on shipment of lumber from New York city. Copy sent company. (Case No. 3445.)

Creighton L. Early, attorney for Polly Edwards, of the town of West Union, Steuben county, against the New York and Pennsylvania Railroad Company as to fence of said company along the land of complainant's client. Answer of company received, stating that the fence has been constructed. Copy sent Mr. Early. Closed. (Case No. 3410.)

H. J. Welcher against the Newark and Marion Railway Company as to said company carrying freight and passengers on its railroad by steam power. Copy sent company. The superintendent of the grade crossing bureau has been instructed to make a report in this matter. (Case No. 3447.)

Mary R. Campbell, secretary, Womens' Municipal League of the Borough of the Bronx, New York city, against the New York City Railway Company as to establishment of a shelter station on its railway. A preliminary report, dated October 21, 1905, received from the electrical expert. Letter, dated October 31, 1905, received from complainant. Ordered that the inspector of grade crossings make a report in this matter. (Case No. 3426.)

J. K. Hotaling of Jamesville against the Syracuse and Suburban Railroad Company as to conditions in the operation of a spur of said company's railroad from Orville. Answer of company received. Copy sent complainant. (Case No. 3430.)

Woodlawn Taxpayers' Association of New York city against the Union Railway Company as to passengers from West Mt. Vernon being compelled to change cars at a point where the Bronx Park station of the elevated railroad is located and as to passengers from Yonkers being compelled to change cars at a point where the Pelham avenue station of the elevated railroad is located, in the borough of the Bronx, New York city. Copy sent company. Answer of company received. Copy sent complainants. Closed. (Case No. 3434.)

Report of the inspector, dated October 12, 1905, as to stations and cars of the State Island Rapid Transit Railway Company. Ordered copy sent company with a letter of recommendation as shown by office original letter on file. (Case No. 3443.)

#### *Applications.*

Application of the Genesee River Railroad Company (steam) for a certificate under section 59 of the Railroad Law, proposed to be constructed from a point in the town of Portage, Livingston county, to a point in the town of Cuba, Allegany county. Ordered hearing set for Wednesday, December 6, 1905, two p. m., at the Hotel Iroquois, Buffalo. (Case No. 3435.)

Application of the Buffalo, Lake Erie and Niagara Railroad Company (steam) for a certificate under section 59 of the Railroad Law. Ordered hearing set for Wednesday, December 6, 1905, ten a. m., or as soon thereafter as counsel may be heard, at the Hotel Iroquois, Buffalo. (Case No. 3432.)

Application of the Buffalo and Rochester Traction Company (street surface) for a certificate under section 59 of the Railroad Law. Ordered hearing set for Wednesday, December 6, 1905, eleven a. m., or as soon thereafter as counsel may be heard, at the Hotel Iroquois, Buffalo. (Case No. 3448.)

Application of the Long Island Railroad Company, under section 34 of the Railroad Law, for consent to discontinue its Bedford station on its Atlantic division, a new station to be located between New York and Nostrand avenues, Brooklyn. Ordered hearing set for Thursday, November 16, 1905, ten a. m., at the New York office of the Board, 406 Whitehall building, 17 Battery place, New York city. (Case No. 3449.)

A letter, dated November 1, 1905, was received from the Attorney-General stating that the certiorari proceeding to review the action of this Board in granting a certificate under section 59 of the Railroad Law to the Syracuse and South Bay Railway Company has been discontinued. Ordered filed. (Case No. 2262.)

#### *Reports.*

In the matter of the sliding of roadbed of the West Shore railroad (leased to and operated by the New York Central and Hudson River Railroad Company) at Kerrs Point, the inspector and superintendent of the grade crossing bureau were instructed to make an inspection and report as to the roadbed of the West Shore railroad adjoining the Hudson river and as to liability of rocks falling on the roadbed from side cuts along the Hudson River division. (Case No. 3452.)

#### *Crossings.*

In the matters of the determination of this Board, under section 62 of the Railroad Law, dated August 24, 1905, that the Caskey's grade crossing of the Erie railroad in the town of Deer Park, Orange county, shall be closed and discontinued and new pieces of highway and an undercrossing of said railroad constructed, detail plan, specifications and estimate of expense for this work were submitted to this Board by the company, and a report thereon, dated October 17, 1905, from the superintendent of the grade crossing bureau was also submitted to the Board. Ordered said detail plan, specifications and estimate of expense approved, the estimate being thirty-seven thousand and fifteen dollars and fifty-five cents (\$37,015.55). (Grade Crossing Case No. 464.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated October 9, 1902, as to changing the Pine, Fonda, Nott and Romeyn streets grade crossings of the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings of said railroad, a detail plan for the bridge spanning the opening at Nott street for the use of the American Locomotive Company was submitted to the Board, together with a report thereon, dated October 20, 1905, from the superintendent of the grade crossing bureau. Ordered said detail plan approved. The structure is to be paid for by the American Locomotive Company. (Grade Crossing Case. No. 390.)

#### *Hearings.*

In the matter of the undercrossing of the Boston and Maine railroad (Fitchburg railroad) at Melrose in the town of Schaghticoke, Rensselaer county, constructed in pursuance of a determination of this Board, under section 62 of the Railroad Law, dated August 24, 1899, G. B. Wellington, representing the town board, and Jarvis P. O'Brien, representing the Boston and Maine railroad, appeared before the Board as to the drainage in the undercrossing, the town board desiring that the drainage system be improved. After hearing evidence and arguments the Board determined and so notified those who appeared (no written determination in this matter) that the company improve the drainage at a total cost not to exceed fifteen hundred dollars. (Grade Crossing Case No. 1.)

Application of the Tunesassa and Bradford Railroad Company, under section 60 of the Railroad Law, for a determination of the manner in which its

railroad (proposed to be constructed) shall cross highways in the towns of Red House and Elko, Cattaraugus county. Cary, Rumsey & Hastings (Mr. Hastings appearing) for the applicant; no one else appeared. After hearing evidence and arguments the evidence was closed but the matter was held open. (Grade Crossing Case No. 566.)

The adjourned hearing in the matter of the application of the New York City Interborough Railway Company (street surface electric), under section 68 of the Railroad Law, for a determination as to how its railway shall cross the New York and Harlem railroad (steam—leased to and operated by the New York Central and Hudson River Railroad Company) at One Hundred and Eightieth street, borough of the Bronx, New York city, it being proposed that said street surface railway shall cross said steam railroad on an existing bridge; and as to the proportion of expense to be borne by the companies; which was to have been held to-day was adjourned until Tuesday, December 12, 1905, 12 m. at the office of the Board in Albany. (Case No. 3399.)

An adjourned hearing in the matter of the application of the Auburn and Syracuse Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface) shall cross the Lehigh Valley railroad (steam; three tracks) at West Genesee street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company, which was to have been held to-day, was postponed until December 12, 1905, 12 m. at the office of the Board in Albany. (Case No. 3405.)

The adjourned hearing in the matter of the application of the Auburn and Northern Electric Railroad Company, under section 68 of the Railroad Law, for a determination as to whether its railroad (single track street surface) shall cross the Lehigh Valley railroad (steam; single track) at State street in the city of Auburn, above, below or at the grade of said steam railroad, the petition asking that the crossing may be made at grade and asking this Board to fix the proportion of expense of such crossing which shall be paid by each railroad company, which was to have been held to-day, was postponed until Tuesday, December 12, 1905, at 12 m. at the office of the Board in Albany. (Case No. 3406.)

#### *Complaints.*

A letter, dated October 20, 1905, was received from the Brooklyn Heights Railroad Company as to compliance with the recommendation of this Board, dated February 9, 1905, to the company that a shelter station be established on Gates avenue between Ralph avenue and Broadway. Ordered that the company be again written on this subject. A report, dated October 13, 1905, as to shelter stations on this company's railroad was received from the electrical expert. Ordered filed. (Case No. 3296.)

A letter, dated November 6, 1905, was received from Charles J. O'Sullivan of New York city, as to badges worn by employees of the New York City Railway Company and the Brooklyn Heights Railroad Company. Ordered filed with miscellaneous letters.

Residents of Sherman Park against the New York Central and Hudson River Railroad Company (New York and Harlem division) as to passenger station. Letter, dated November 1, 1905, received from the company, stating that it has arranged to erect a passenger station at this point. Copy sent complainants. (Case No. 3393.)

Haddock, Blanchard & Company of Binghamton against the Ulster and Delaware Railroad Company as to switching charge on cars of coal. Copy sent company. Answer of company received. Copy sent complainants. Reply of complainants received. Closed. (Case No. 3441.)

#### *Reports.*

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the New York and Ottawa Railroad Company

as to the physical condition of its railroad, a letter, dated November 2, 1905, was received from the company, stating that the recommendations had been or would be complied with. Ordered filed. (No. 2—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the New York, New Haven and Hartford Railroad Company as to the physical condition of the portions of its railroad in this State, a letter, dated November 1, 1905, was received from the company, stating that the recommendations would be complied with. Ordered filed. (No. 36—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the Buffalo Creek railroad as to the physical condition of its railroad, a letter, dated October 31, 1905, was received from the company as to compliance with the recommendations. Ordered filed and that the companies interested in the Delaware, Lackawanna and Western railroad crossing be asked to have representatives appear before the Board in Buffalo on Wednesday, December 6, 1905, ten a. m. (No. 29—1905; see No. 9, 1903.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the Keeseville, Ausable Chasm and Lake Champlain Railroad Company as to the physical condition of its railroad, a letter, dated October 28, 1905, was received from the company as to compliance with the recommendations. Ordered filed. (No. 35—1905.)

In the matter of the recommendation of this Board contained in a letter, dated October 20, 1905, to the Lake Champlain and Moriah Railroad Company as to the physical condition of its railroad, a letter, dated October 27, 1905, was received from the company stating that the recommendation would be complied with. Ordered filed. (No. 34—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the New York, Chicago and St. Louis Railroad Company as to the physical condition of its railroad in this State, a letter, dated October 26, 1905, was received from the company as to compliance with the recommendations. Ordered filed and that the inspector meet the engineer of the company in relation to recommendation as to bridge near Irving and report. (No. 40—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the Lehigh and Hudson River Railway Company as to the physical condition of its railway in this State, a letter, dated October 24, 1905, was received from the company, stating that the recommendations will be complied with. Ordered filed. (No. 26—1905.)

In the matter of the recommendations of this Board contained in a letter dated September 19, 1905, to the Norwood and St. Lawrence Railroad Company as to the physical condition of its railroad, letters, dated October 24 and November 6, 1905, were received from the company, stating that the recommendations had been or would be complied with. Ordered filed. (No. 23—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the receiver of the Pittsburgh, Shawmut and Northern Railroad Company as to the physical condition of the railroad of said company in this State, a letter, dated October 23, 1905, was received from the receiver, stating that the recommendations had been or would be complied with. Ordered filed. (No. 42—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the Unadilla Valley Railway Company as to the physical condition of its railway, a letter, dated October 22, 1905, was received from the company, stating that the recommendations will be complied with. Ordered filed. (No. 28—1905.)

In the matter of the recommendations of this Board contained in a letter, dated October 20, 1905, to the Poughkeepsie and Eastern railway as to the physical condition of its railway, a letter, dated October 22, 1905, was received from the superintendent, stating that the recommendations had been or would be complied with. Ordered filed. (No. 25—1905.)

In the matter of the recommendation of this Board contained in a letter, dated October 20, 1905, to the United States and Canada Railroad Company

as to the physical condition of said railroad, a letter, dated October 21, 1905, was received from the company that the recommendation will be complied with. Ordered filed. (No. 33—1905.)

In the matter of the recommendations of this Board contained in a letter, dated September 13, 1905, to the Buffalo Southern Railway as to crossings of steam railroads by the Buffalo, Gardenville and Ebenezer railway (now a part of the Buffalo Southern railway), a letter, dated October 24, 1905, was received from the company. Ordered letter written company as shown by office original letter on file. (Case No. 2325.)

Report of the electrical expert, dated October 13, 1905, as to a rear end collision between trains on the Manhattan railway (leased to and operated by the Interborough Rapid Transit Company) on October 5, 1905, 9:01 p. m., at Third avenue and One Hundred and Sixth street. Ordered copy sent company. (Street Case No. 32—1905.)

Report of the electrical expert, dated October 17, 1905, as to rear collision between passenger trains on the Fifth Avenue elevated line of the Brooklyn Heights Railroad Company between Thirty-sixth and Fortieth streets stations, September 16, 1904. Ordered copy sent company. (Street Case No. 38—1904.)

Report of the electrical expert, dated October 18, 1905, as to runaway car on the cable line of the Brooklyn Heights Railroad Company in Montague street, Brooklyn, on October 11, 1905, at 11:58 a. m. Ordered copy sent company. (Street Case No. 33—1905.)

Report of the electrical expert, dated October 20, 1905, as to an accident on the Brooklyn Heights railroad September 23, 1905, 7:35 p. m., on Fifth avenue, Brooklyn, between Seventy-second and Seventy-third streets. Ordered copy sent company. (Street Case No. 30—1905.)

Report of the electrical expert, dated October 17, 1905, as to rear collision between cars of the Brooklyn Heights Railroad Company at 1:25 p. m., September 10, 1905, at the trestle over Coney Island creek. Ordered copy sent company. (Street Case No. 29—1905.)

Report of the inspector, dated October 11, 1905, as to derailment of a New York, New Haven and Hartford railroad passenger train at the southerly end of the Park avenue steam railroad tunnel, New York city, September 18, 1905. Ordered copy sent N. Y. C. & H. R. and N. Y., N. H. & H. Railroad Companies. (Steam Case No. 28—1905.)

Report of the inspector, dated November 9, 1905, as to a rear collision between a passenger and a freight train on the Rome, Watertown and Ogdensburg division of the New York Central and Hudson River railroad near Carthage, October 9, 1905. Ordered copy sent company. (Steam Case No. 30—1905.)

In the matter of the recommendations of this Board as to guard rails on curves of the New Paltz, Highland and Poughkeepsie Traction Company's railroad, a letter, dated October 23, 1905, was received from the company, stating that the recommendations had been complied with. Ordered filed. (Street Case No. 40—1905.)

In the matter of the recommendations of this Board to the Coney Island and Brooklyn Railroad Company as to rear collision between cars of said company on Coney Island avenue near Coney Island creek, August 9, 1905, a letter was received from the company stating that the second recommendation of the Board (as well as the first) would be complied with. Ordered filed. (Street Case No. 20—1905.)

In the matter of the recommendation of this Board contained in a letter, dated September 22, 1905, to the Utica and Mohawk Valley Railway Company as to equipment of cars on the Highland Avenue, Utica, line of said company with double chain brakes, a letter, dated October 12, 1905, was received from the company, stating that it would equip cars with double chain brakes. Ordered filed. (Street Case No. 21—1905.)

The Board ordered that accident reports be not printed in future annual reports, but that a short statement as to these reports be printed instead.

#### *Crossings.*

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902,



as to changing certain grade crossings of the New York Central and Hudson River railroad and the railroad operated by The Delaware and Hudson Company in Schenectady to undercrossings, an opinion, dated October 12, 1905, was received from the Attorney-General to the effect that the State's proportion of the expense is to be met by special and distinct appropriations and not from the amount appropriated annually for the general purpose of meeting the State's share of the expense of grade crossings referred to in the general grade crossing law. Ordered filed. (Grade Crossing Case No. 369.)

In the matter of the petition of the town board and acting commissioner of highways of the town of Concord, Erie county, for a modification of the determination of this Board, dated August 10, 1904, as to the Buffalo and Susquehanna railway crossing the Morse road highway in said town at grade, the modification asked for being that the highway shall be carried over the railway on a bridge, a letter, dated November 8, 1905, was received from Bissell, Carey & Cooke, attorneys of the company, stating that this crossing has been constructed at grade. Ordered filed. (Grade Crossing Case No. 478.)

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated August 17, 1900, as to the Lockport and Olcott railway (now International railway) crossing highways in the towns of Lockport and Newfane, Niagara county, a letter, dated November 1, 1905, was received from the company as to crossing alarm bells at the crossings. Ordered letter written the company as shown by copy on file. (Grade Crossing Case No. 267.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 9, 1904, as to the closing and discontinuance of the grade crossing of the New York, Ontario and Western railway by the Newburgh and Campbell Hall road highway near the Rock Tavern station of said railway, in the town of New Windsor, Orange county, and the construction of new pieces of highway and an overhead crossing of said railway, a report, dated October 31, 1905, was received from the inspector of grade crossings. Ordered filed. The superintendent of the grade crossing bureau is to make a report as to this work. (Grade Crossing Case No. 488.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 23, 1904, as to changing the Broadway grade crossing of the New York and Putnam division of the New York Central and Hudson River railroad near Van Cortlandt, New York city, to an undercrossing, a report, dated October 24, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade crossing Case No. 503.)

In the matter of the determination of this Board, under section 68 of the Railroad Law, as to a switch track of the New York Central and Hudson River railroad crossing the Yonkers railroad on Lake avenue, Yonkers, dated August 24, 1905, a report, dated October 24, 1905, was received from the inspector of grade crossings. Ordered filed. (Grade Crossing Case No. 542.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 14, 1905, as to the closing and discontinuance of two highway grade crossings of the New York, Ontario and Western railway near its Stony Ford station in the town of Wallkill, Orange county, and the construction of a new piece of highway and an overhead crossing of said railway, a report, dated November 1, 1905, was received from the inspector of grade crossings as to the progress of the work. Ordered filed. (Grade Crossing Case No. 442.)

Petition of the president and trustees of the village of Westfield, under section 62 of the Railroad Law, as to changing the North Portage street grade crossing of the New York, Chicago and St. Louis railroad in said village to an overcrossing. Ordered hearing set for Wednesday, December 6, 1905, 1 p. m., at the Hotel Iroquois, Buffalo. (Grade Crossing Case No. 565.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated August 28, 1902, and modified determination contained in letters dated March 12, 1903, to the company and the town as

to the changing of the Hotel or Main street grade crossing of the New York Central and Hudson River railroad in the town of Byron, Genesee county, to an undercrossing and the closing and discontinuance of the South Market street grade crossing of said railroad in said town and the construction therefrom of a new piece of highway to the Hotel or Main street undercrossing, an accounting and settlement and supplemental accounting and settlement between the company and the town were submitted to the Board, together with a report thereon, dated October 18, 1905, from the superintendent of the grade crossing bureau. Ordered that the State's proportion of the cost, namely, thirteen thousand three hundred and sixty-four dollars and ninety-four cents (\$13,364.94) be paid to the New York Central and Hudson River Railroad Company. (Grade Crossing Case No. 386.)

In the matter of the determination of this Board, under section 62 of the Railroad Law, dated November 22, 1900, and modified determination, dated July 31, 1901, as to the closing and discontinuance of the Seneca turnpike highway grade crossing of the West Shore railroad (leased to and operated by the New York Central and Hudson River Railroad Company) in the town of Vernon, Oneida county, at a point known as Adams crossing, and the construction of a new overhead bridge crossing of said railroad in place of a then existing overhead crossing, and improved approaches to said bridge, an accounting and settlement of the cost between the company and the town was submitted to the Board, together with a report thereon, dated October 19, 1905, from the superintendent of the grade crossing bureau. Ordered that the State's proportion of the cost, namely, two thousand one hundred and sixty-three dollars and thirteen cents (\$2,163.13) be paid to the New York Central and Hudson River Railroad Company. (Grade Crossing Case No. 143.)

In the matter of the determination of this Board, under section 62 of the Railroad Law and chapter 376 of the Laws of 1902, dated October 9, 1902, as to changing certain grade crossings of the New York Central and Hudson River railroad and the railroad operated by The Delaware and Hudson Company in Schenectady from grade to undercrossings, detail plan of the masonry for the bridge at State street were submitted to the Board by the New York Central and Hudson River Railroad Company, together with a report thereon, dated September 12, 1905, from the superintendent of the grade crossing bureau, the report being made on plans copies of which had theretofore been submitted to the grade crossing bureau. Ordered approved said detail plan of masonry for the bridge. (Grade Crossing Case No. 369.)

#### *Orders.*

The Board ordered annulled its determination, under section 62 of the Railroad Law, dated May 2, 1901, as to changing the Minaville street, Amsterdam, grade crossing of the West Shore railroad (leased to and operated by the New York Central and Hudson River Railroad Company) to an overcrossing, a proposed new canal bridge for which the State has made no appropriation being involved in this matter. (Grade Crossing Case No. 169.)

The appointment of John A. Dolan as page at \$1.25 per day was confirmed.

#### *Bills Approved.*

The following bills were approved:

#### *General Expenses.*

Thomas J. Cowell (October) .....	\$13 90
New York Telephone Co. (New York office) .....	11 30
American District Telegraph Co. (New York office) ..	2 25
Western Union Telegraph Co. (New York office) .....	3 03
Brandow Printing Co. ....	130 90
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	\$161 38
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The Board adjourned.

NEW YORK, NOVEMBER 14, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Application of the Erie Railroad Company for approval of an increase of the common stock of said company from one hundred and thirty-three million dollars (\$133,000,000) to one hundred and fifty-three million dollars (\$153,000,000). George F. Brownell for the applicant. After hearing arguments the hearing was closed. (Case No. 3453.)

Adjourned hearing in the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street and Quimby street grade crossings of its railroad and as to the closing and discontinuance of grade crossings of its railroad by three alley-ways or drive-ways north of Quimby street, in the village of Ossining, the construction of a new street on the east side of said railroad to Secor road, the construction of an overhead crossing of said railroad at a point about 110 feet south of the present passenger station on said railroad in Ossining, the team traffic from Quimby street and the travel from said alley-ways or drive-ways north of Quimby street being proposed to be diverted through Water street to Broadway or Secor road,—the construction of an overhead crossing of said railroad at Broadway and the construction of an overhead crossing of said railroad for foot passengers at Quimby street. C. C. Spaulding for the petitioner; Frank L. Young for the petitioner; Frank L. Young for the president and board of trustees of the village of Ossining, not in opposition, but asking that certain additions be made in the plan proposed; F. A. Stratton for the Northern Westchester Lighting Company in relation to a change in the plan proposed; John Gibney for George W. Cartwright, the Rigney Estate and Jacob Ruppert's Company, not in opposition, but asking that certain additions be made to the plan proposed; Samuel Watson for Anna A. Brandreth, John Turner & Son and Harriett Turner, property owners; J. M. Terwilliger for the Cronk Estate; John P. Faure for the Board of Trade of Ossining as to addition to plan; Phillip B. Adams for Armour & Company. After hearing arguments it was agreed that representatives of the village, those who appeared at this hearing and representatives of the railroad company should confer as to change of the plan proposed and notify this Board of the result. If there is not another hearing the evidence is considered closed of this date, but the matter is held open. (Grade Crossing Case No. 550.)

Adjourned hearing in the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to changing the Main street grade crossing of said company's railroad in the village of Tarrytown to an undercrossing in the line of the present grade crossing and as to changing the Wildey street grade crossing of said company's railroad in said village from grade to an undercrossing of the railroad in the line of the present grade crossing and as to the construction of an undercrossing of said company's railroad for foot passengers alone in the line of Dock street. C. C. Paulding for the petitioner; Frank V. Millard for the village of Tarrytown and property owners, in opposition; Seth Bird for James Bird, a property owner, in opposition. After hearing arguments it was agreed that the engineer of the company and the village should meet on the 16th inst. as to changes in the proposed plan, they to notify the Board if an agreement as to the plan is reached, and if not there is to be another hearing in this matter. If there is not another hearing in this matter the evidence is considered closed of this date, but the matter is held open. (Grade Crossing Case No. 535.)

*Reports.*

In the matter of the recommendations of this Board as to the physical condition of the Buffalo, Attica and Arcade railroad a report, dated October 20, 1905, from the superintendent of the grade crossing bureau and a copy

of a letter, dated November 13, 1905, to the company were submitted to the Board. Ordered letter written company as shown by copy on file. (No. 15—1905.)

*Orders.*

Application of the Erie Railroad Company for approval of an increase of the common stock of said company from one hundred and thirty-three million dollars (\$133,000,000) to one hundred and fifty-three million dollars (\$153,000,000). Granted. (Case No. 3453.)

A recess was taken until 2 p. m.

**AFTER RECESS—2 P. M.**

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Adjourned hearing in the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Washington avenue and Dock street grade crossing of its railroad in the village of Hastings-on-Hudson and the construction of new pieces of streets leading therefrom to an overhead crossing of said railroad proposed to be constructed about 200 feet north of the present grade crossing at Dock street. C. C. Paulding for the petitioner; Charles D. Millard, attorney for the village, and F. G. Zinsser, president of the village, for the village of Hastings-on-Hudson, Mr. Millard also appearing for Charles H. Beavers, Bridget Maher and Anna Folich, property owners; Frank V. Millard and Arthur J. Burns for property owners; Charles H. Ketcham for George H. Ketcham, a property owner; Hitchings & Pallister for Elizabeth Schlosser, a property owner; James R. Warner for Mrs. Maloy, a property owner. After hearing arguments the evidence was closed, but the matter was held open. Frank V. Millard is to have a survey of Washington avenue made and file a copy of the survey or plan with this Board, the village and the company. (Grade Crossing Case No. 548.)

Adjourned hearing in the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Tibbets avenue, Railroad avenue and Hamilton avenue grade crossings of the New York and Harlem railroad, its lessor, in the village of White Plains, the construction of an undercrossing of said railroad at a point about 800 feet north of the present grade crossing at Tibbets avenue, the construction of new pieces of streets to said undercrossing, the changing of location of the existing main tracks of said railroad to a point about 350 feet westerly of the present tracks at Railroad avenue, the railroad there to cross Railroad avenue above grade and to pass westerly of the west end of Hamilton avenue without crossing said Hamilton avenue,—Bronx street which will be intersected by said tracks when relocated as proposed to be constructed westerly of and parallel with said tracks from a point on Bronx street about 170 feet north of its present intersection with Main street to Railroad avenue, and no crossing of said tracks and Bronx street to exist at the point where the present Bronx street will be met by said tracks when relocated as proposed. It is also proposed that Mott street will be crossed above grade by said relocated tracks. C. C. Paulding for the petitioner; Henry T. Dykeman for the village, in opposition; F. W. Clark for the Estate of John Read; Hughes & Holden for Tony Richards. After hearing arguments the evidence was closed, but the matter was held open. Mr. Dykeman and Mr. Paulding are to file briefs, exchanging them within twenty days. (Grade Crossing Case No. 551.)

The Board adjourned.

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NEW YORK, NOVEMBER 15, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Crossings.*

In the matter of the determination of this Board, under section 60 of the Railroad Law, dated August 10, 1904, as to the Buffalo and Susquehanna railway crossing streets, avenues and highways in the county of Erie, in which matter a petition was received from the town board and acting commissioner of highways of the town of Concord asking for a modification of the determination so that the Morse road highway shall be carried over the railway on a bridge instead of the railway crossing said highway at grade and in which matter a hearing had been set for Tuesday, December 5, 1905, 12 m., at the Iroquois Hotel, Buffalo, a letter, dated November 13, 1905, was received from the supervisor of the town withdrawing said application. Ordered leave to withdraw said application granted and information sent to those who received notice of said proposed hearing that it will not take place. (Grade Crossing Case No. 478.)

Petition (amended petition) of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Hartsdale avenue grade crossing of the New York and Harlem railroad, its lessor, in the towns of Scarsdale and Greenburg, Westchester county, the construction of an overhead crossing of said railroad about 300 feet south of the present grade crossing at Hartsdale avenue, the construction of new pieces of highway to said proposed overhead crossing and the construction of a foot bridge at the location of the present said Hartsdale avenue grade crossing. C. C. Paulding for the petitioner; Frank V. Millard for the highway commissioners of the town of Greenburg; Eugene Songhein for the highway commissioners of the town of Scarsdale. After hearing evidence and arguments the evidence was closed, but the matter was held open. Mr. Millard did not appear in opposition. Mr. Songhein appeared in opposition to the grade (8 per cent.) of the approach to the overcrossing on the town of Scarsdale side and apparently in opposition to the town of Scarsdale paying one-quarter of the entire expense inasmuch as most of the entire structure is in the town of Greenburg. (Grade Crossing Case No. 552.)

Petition of the New York, New Haven and Hartford Railroad Company, under section 62 of the Railroad Law, as to changing a grade crossing of the Highland division of its railroad by a highway at a point known as the first grade crossing west of the bridge over the Croton river at Brewster in the town of South East, Putnam county, to an undercrossing of said railroad. William Greenough for the petitioner; W. E. Addis for the village of Brewster; I. J. Beaudrias for the city of New York. After hearing evidence and arguments a recess in this matter was taken. (Grade Crossing Case No. 556.)

Petition of the Central New England Railway Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railway by a highway in the village of Pleasant Valley, Dutchess county, at a point immediately east of the station of said railway company in Pleasant Valley and the construction of a new piece of highway north of said company's railway from the said first named highway to a highway known as the Poughkeepsie road which now crosses said railway at grade west of said station. William Greenough for the petitioner; Clarence J. Drake attorney for the town of Pleasant Valley; H. C. Barker for property owners. After hearing evidence and arguments a recess in this matter was taken so that the hearing in the preceding crossing case, in the town of South East, Putnam county, might be resumed. (Grade Crossing Case No. 557.)

The hearing in the petition of the New York, New Haven and Hartford Railroad Company, under section 62 of the Railroad Law, as to changing a grade crossing of its railroad in the town of South East, Putnam county, to an undercrossing was resumed. After hearing arguments the evidence was closed, but the matter was held open. (Grade Crossing Case No. 556.)

The matter of the petition of the Central New England Railway Company as to a grade crossing of its railway in the town of Pleasant Valley was resumed. After hearing evidence and arguments further the hearing was

adjourned to a date to be thereafter fixed. This crossing is in the town of Pleasant Valley, Dutchess county, instead of in the village of Pleasant Valley, and the supervisor of the town, Mr. Drake and Mr. Baker must receive notice of the next hearing. (Grade Crossing Case No. 557.)

Adjourned hearing in the application of the New York, New Haven and Hartford Railroad Company, on its own behalf and on behalf of its lessor, the New England Railroad Company, under section 60 of the Railroad Law, for a determination by the Board of the manner in which a second track of the Highland division of its railroad shall cross streets, avenues and highways in the counties of Dutchess and Putnam. William Greenough for the applicant; C. A. Fowler, engineer of Dutchess county, particularly in relation to crossing in the town of East Fishkill, Dutchess county; Lewis H. Wright, supervisor of the town of East Fishkill, Dutchess county. After hearing evidence and arguments a recess in this matter was taken until 2:15 p. m. (Grade Crossing Case No. 559.)

A recess was taken until 2 p. m.

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

Adjourned hearing in the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pondfield road grade crossing of the New York and Harlem railroad, its lessor, in the village of Bronxville, the travel thereon to be diverted through Sagamore avenue to an overhead crossing of said railroad proposed to be constructed about 200 feet north of the present grade crossing at Pondfield road, with an approach on the east between Gramatan avenue and said proposed overhead bridge, and on the west to said overhead bridge parallel to and at right angles to the track from the intersection with the continuation of Front avenue from Palmer avenue; also the construction of an undercrossing for foot passengers of said railroad at the point where Palmer avenue if now extended would cross said railroad. C. C. Paulding for the petitioner; Kate I. Buckley appeared in person in opposition; Herman Duden for Sophia Duden and William Duden, property owners, in opposition; Alfred E. Smith for property owners not named; Theodore Dewitt for the Dewitt Estate, a property owner; W. V. Lawrence, a property owner, appeared in person; William G. Alger for himself individually, as a property owner, and for Henry C. Alger and Jennie A. Jenks, property owners; H. L. Falk for Henry Erkins, a property owner; Frederick Sprenger, a property owner, appeared in person. No one entered an appearance for the village at this hearing. No evidence or arguments were taken. At the request of the petitioner the hearing was adjourned to a date to be thereafter fixed. (Grade Crossing Case No. 549.)

2:15 P. M.

The hearing in the application of the New York, New Haven and Hartford Railroad Company, under section 60 of the Railroad Law, was resumed. After hearing evidence and arguments, the evidence was closed but the matter was held open. At the hearing on October 18 crossings numbered from 1 to 13½ were considered; at this hearing some of the crossings numbered from 1 to 13½ were considered, and all of the crossings numbered from 14 to 20 were considered. (Grade Crossing Case No. 559.)

Adjourned hearing in the petition of the New York Central and Hudson River Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Main street grade crossing of the New York and Harlem railroad, its lessor, in the village of Tuckahoe, the construction of an overhead crossing of said railroad about 250 feet south of the present grade crossing at Main street, the construction of new pieces of streets leading to said proposed overhead crossing and the construction of an overhead footbridge at the present location of the Main street crossing. C. C.

Paulding for the petitioner; H. D. Lent for the village and for the Dusenberry Estate, property owners, in opposition to the plan proposed; William Rubly, president of the village, also appeared in opposition to plan proposed. After hearing evidence and arguments, the evidence was closed, but the matter was held open. (Grade Crossing Case No. 553.)

The Board adjourned.

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NEW YORK, NOVEMBER 16, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

#### *Hearings.*

Application of the Long Island Railroad Company, under section 34 of the Railroad Law, as to the discontinuance of the Bedford station (located at Franklin avenue and Atlantic avenue, borough of Brooklyn), on its railroad on Atlantic avenue, a new station having been established on said railroad between New York and Nostrand avenues. J. F. Keany for the applicant. No one else appeared. After hearing evidence and arguments the hearing was closed. (Case No. 3449.)

Adjourned hearing in the matter of the petition of the mayor and common council of the city of Yonkers and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pier street, Fernbrook street, Dock street, Wells avenue and Ashburton avenue grade crossings of said company's railroad, the changing of the present overgrade crossing of said company's railroad by Main street to an undercrossing, the raising of the present Vark street and Babcock place overcrossings of said railroad, it being proposed that the travel from the Pier street and Fernbrook street crossings shall be diverted by the construction of a new piece of highway on the westerly side of said railroad and by the existing Bridge street on the easterly side of said railroad to an overhead crossing of said railroad proposed to be constructed at a point about 105 feet south of the present Fernbrook street grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Wells avenue grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Ashburton avenue grade crossing of said railroad. A. H. Harris for the company; Ludlow & Townsend for James B. Ludlow, as one of the executors and trustees of the last will and testament of Thomas W. Ludlow, Jr., deceased, and especially for the purpose of objecting to the jurisdiction for Jacob F. Miller, the other surviving executor and trustee of the same will and testament, also for executors and trustees of the last will and testament of Henry M. Schieffelin, deceased, also for the Pure Oil Company at the request of Mr. Murphy; Augustus N. Hand for Annie L. Winters, and for John J. Townsend attorney for James B. Ludlow, individually; Sherman & Sterling for the Westchester Electric Lighting Company; Fisher & Fisher for W. E. D. Stokes; Lavinia Lally for himself, Catherine M. Lally and Emelie Lally. After hearing evidence and arguments the hearing was adjourned until Wednesday, November 22, 1905, 10:30 a. m., at the New York office of this Board, room 406, Whitehall Building, 17 Battery place, New York city, with the understanding that on that day the evidence will be closed. (Grade Crossing Case No. 533.)

#### *Orders.*

Application of the Long Island Railroad Company, under section 34 of the Railroad Law, as to the discontinuance of the Bedford station (located at Franklin avenue and Atlantic avenue, borough of Brooklyn,) on its railroad on Atlantic avenue, a new station having been established on said railroad between New York and Nostrand avenues. Granted. (Case No. 3449.)

The Board adjourned.

## HUNTINGTON STATION, L. I., NOVEMBER 20, 1905—11 A. M.

Hearings before Commissioners Baker and Dickey (by delegation of the Board).

*Hearings.*

Petition (second petition) of the Long Island Railroad Company, under section 62 of the Railroad Law, as to changing the grade crossing of said company's railroad by a highway known as New York avenue in the town of Huntington, Suffolk county, situated at a point about 100 feet easterly from the Huntington station on said company's railroad, to an undercrossing of said railroad substantially in the present line of the highway, an entrance to said undercrossing also being proposed to be made from First street and Fairground avenue; and petition (second petition) of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as Long Swamp road in the town of Huntington, Suffolk county, situated at a point about 800 feet easterly from the Huntington station on said company's railroad, the travel to be diverted therefrom by the construction of a new piece of highway from the Long Swamp road to a connection with First street, which First street it is proposed shall connect with an undercrossing of said railroad by New York avenue proposed to be constructed—the hearings on these two petitions were held at one hearing. J. F. Keany for the petitioner; Rowland Miles for John F. Mullen, a property owner; Willard M. Baylis for Messrs. Soler, Pettit, Rosenbaum and David Valentine, individual property owners, in opposition to plan proposed by the railroad company, Mr. Baylis presenting a plan of his own which provides that the two crossings in question shall cross the railroad overhead at the present grade of the highways the railroad to be depressed; Allison E. Lowndes, highway commissioner, in opposition to plan proposed by the company but in favor of that proposed by Mr. Baylis; R. F. Woodward, for property owners, in opposition to any change of the crossings but in favor of the erection of crossing gates at the crossings. After hearing evidence and arguments the company withdrew said two petitions and said that it would submit to the Board a new petition or petitions providing for the depression of the railroad and the carrying of the Long Swamp road and New York avenue across the railroad above grade at the present grade of the highways. (Grade Crossing Cases Nos. 569 and 570.)

Grade Crossing Cases Nos. 379 and 380, which are petitions of the Long Island Railroad Company in relation to these same two crossings, are closed. See minutes of September 15, 1905.

The Board took a recess until 12:30 p. m.

AFTER RECESS—12:30 P. M. (1:15 P. M.)

## CENTRAL PARK STATION, L. I., NOVEMBER 20, 1905.

The Board again met. Present, Commissioners Baker and Dickey (by delegation of the Board).

*Hearings.*

Petition (second hearing) of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the grade crossing of said company's railroad by a highway known as Plainview road or Jerusalem avenue in the town of Oyster Bay, Nassau county, situated at a point about 600 feet easterly from the Central Park station on said railroad, the travel thereon to be diverted therefrom by existing highways on each side of said railroad to an existing grade crossing of said company's railroad by a highway known as Park avenue situated next east of the Plainview road or Jerusalem avenue grade crossing. (See minutes of September 15, 1905.) J. F. Keany for the petitioner; George B. Stoddard for the town of Oyster Bay and for the highway commissioner of the town, in opposition; James J. Powers for the Citizens' Association of Central Park, in



opposition; James V. Feather for the Farmingdale Board of Trade; John H. Hand for the Hicksville Village Improvement Association. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. The company is to prepare a plan and estimate changing the Plain-view road or Jerusalem avenue grade crossing of the railroad to an undercrossing and send a copy of the plan and estimate to this Board, after which the adjourned hearing will be fixed for the New York office of this Board. (Grade Crossing Case No. 261.)

The Board took a recess until 2 p. m.

AFTER RECESS— 2 P. M. (3:20 P. M.)

RONKONKOMA STATION, L. I., NOVEMBER 20, 1905.

The Board again met. Present, Commissioners Baker and Dickey (by delegation of the Board).

*Hearings.*

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Delamaters road or Chestnut avenue in the town of Islip, Suffolk county, situated at a point about 3,450 feet westerly from the Ronkonkoma station on said company's railroad, the travel thereon to be diverted therefrom by existing highways on each side of said railroad to an existing grade crossing of said railroad by a highway known as Ocean avenue or Lakeland road situated next west of the Delamaters road or Chestnut avenue grade crossing. J. F. Keany for the petition; Ralph C. Green, attorney, appeared specially for the town of Islip and objected to alleged insufficiency of notice of hearing given. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed at the New York office of this Board. (Grade Crossing Case No. 259.) See minutes of September 15, 1905.

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Broadway or Patchogue and Lake road in the town of Islip, Suffolk county, situated at a point about 8,900 feet easterly from the Ronkonkoma station on said company's railroad, the travel thereon to be diverted therefrom by the construction of a new piece of highway on the southerly side of said railroad to the next crossing at grade of said railroad west of said Broadway or Patchogue and Lake road crossing. J. F. Keany for the petitioner; Ralph C. Greene attorney, appeared specially for the town of Islip and objected to alleged insufficiency of notice of hearing given; Joseph T. Losee specially for the Merchants' Association of the village of Patchogue and also specially for the town of Brookhaven and objected to alleged insufficiency of notice of hearing given. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed at the New York office of this Board. (Grade Crossing Case No. 235.) See minutes of September 15, 1905.

The Board took a recess until 3 p. m.

AFTER RECESS—3 P. M. (4:40 P. M.)

MEDFORD STATION, L. I., NOVEMBER 20, 1905.

The Board again met. Present, Commissioners Baker and Dickey (by delegation of the Board).

*Hearings.*

Petition (second petition) of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as John Hulse road in the town of Brookhaven, Suffolk county, situated at a point about 9,900 feet easterly from Holtsville (Waverly) and 2,550 feet westerly from

the Medford station on said company's railroad, the travel thereon to be diverted therefrom through existing highways to a proposed undercrossing of said railroad proposed to be constructed in a proposed extension of Medford avenue or Port Jefferson road in which said Medford avenue or Port Jefferson road there now exists a bicycle path, which proposed undercrossing if constructed would be about 9,000 feet easterly from Holtsville (Waverly) and about 3,450 feet westerly from the Medford station on said company's railroad and about 25 feet westerly from the said bicycle path. J. F. Keany for the petitioner; James M. Ashton and E. L. Robinson, highway commissioners, for the town, not in opposition if the undercrossing is 30 feet wide and with a clear headroom of 13 feet. After hearing evidence and arguments the hearing was adjourned to a date to be thereafter fixed. (Grade Crossing Case No. 568.) See minutes of September 14, 1905.

Grade Crossing Case No. 257 was closed. Grade Crossing Case No. 567 was closed, inasmuch as the petition was not in proper form, it referring to a crossing which is not a highway crossing and also inasmuch as this matter is taken care of in the petition in Grade Crossing Case No. 568.

The Board adjourned.

OAKDALE, L. I., NOVEMBER 21, 1905—11:30 A. M. (12:15 P. M.)

Hearings before Commissioners Baker and Dickey (by delegation of the Board).

#### *Hearings.*

Petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as Old Pond road in the town of Islip, Suffolk county, situated at a point about 8,600 feet easterly from the Great River station on said company's railroad, the travel thereon to be diverted therefrom by the construction of a new piece of highway on the north sides of the railroad between Old Pond road and South Country road to an overhead crossing of said railroad proposed to be constructed at the location of the present South Country road grade crossing, next west of said Old Pond road grade crossing; and petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of a grade crossing of said company's railroad by a highway known as South Country road in the town of Islip, Suffolk county, situated at a point about 7,470 feet easterly from the Great River station on said company's railroad, the travel thereon to be diverted therefrom to an overhead crossing of said railroad to be constructed about at the point of the present grade crossing: the hearings on these two petitions were held as one hearing. J. F. Keany for the petitioner; Ralph C. Greene, specially for the town of Islip, in opposition to both petitions on account of alleged insufficiency of notices of hearing. After hearing evidence and arguments the petitions were withdrawn and the cases closed. It is likely that a new petition or petitions as to these crossings will be filed by the company involving a different plan. (Grade Crossing Cases Nos. 246 and 247.) See minutes of September 14, 1905.

The Board took a recess until 1:30 p. m.

AFTER RECESS—1:30 P. M. (3:30 P. M.)

JAMAICA, L. I., NOVEMBER 21, 1905.

The Board again met. Present, Commissioners Baker and Dickey (by delegation of the Board).

#### *Hearings.*

Adjourned hearings on the petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to changing the Rockaway road highway grade crossing of its railroad in Jamaica, borough of Queens, city

of New York, from grade to an undercrossing; and on the petition of the Long Island Railroad Company, under section 62 of the Railroad Law, as to the closing and discontinuance of the Division street grade crossing of its railroad in Jamaica, borough of Queens, city of New York, and the diversion of the travel to the proposed Rockaway road undercrossing; the hearings on these two petitions were held as one hearing. J. F. Keany for the petitioner; John O'Donnell for himself; Albert D. Haft for Charles Trautman, John Distler, William Goeller, John Leonardi and Mr. Sturz, property owners on both sides of Fifth street; George W. Bartholf for John Fitzgerald; William Cogswell for himself; Michael Perry for the Kingsbury Firm, Wells & Zerwich, Fred Young and Cyrus W. Jordan; John S. Zeller for the South Side Citizens' Improvement Association; William F. Byrne for Nelson Morris & Company; John and Thomas Adikes, property owners; Michael J. Carter for the Jamaica Citizens' Association; H. P. Engelhart for the Allied Civic Associations of the Fourth Ward, borough of Queens. After hearing evidence and arguments the hearings were not closed, the company asking leave to withdraw these petitions, but persons appearing objected. It is likely that the company will file with the Board a new petition providing for an undercrossing of its railroad at Church street and if so the matter of closing these two petitions will be considered by the Board. (Grade Crossing Cases Nos. 391 and 392.)

#### *Reports.*

Report of the inspector, dated November 8, 1905, of his inspection of the portion of the Middletown, Unionville and Water Gap railroad in this State. Ordered copy sent company with a letter of recommendation as shown by office original letter on file. (No. 45—1905.)

The Board adjourned.

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NEW YORK, NOVEMBER 22, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

#### *Hearings.*

Adjourned hearing in the matter of the petition of the mayor and common council of the city of Yonkers and the New York Central and Hudson River Railroad Company, joined, under section 62 of the Railroad Law, as to the closing and discontinuance of the Pier street, Fernbrook street, Dock street, Wells avenue and Ashburton avenue grade crossings of said company's railroad in Yonkers, the changing of the present overgrade crossing of said company's railroad by Main street to an undercrossing, the raising of the present Vark street and Babcock place overcrossings of said railroad, it being proposed that the travel from the Pier street and Fernbrook street crossings shall be diverted by the construction of a new piece of highway on the westerly side of said railroad and by the existing Bridge street on the easterly side of said railroad to an overhead crossing of said railroad proposed to be constructed at a point about 105 feet south of the present Fernbrook street grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Wells avenue grade crossing of said railroad, it being also proposed that an undercrossing of said railroad shall be constructed at the present Ashburton avenue grade crossing of said railroad. Ira A. Place and C. C. Paulding for the New York Central and Hudson River Railroad Company; Ludlow & Townsend (Mr. Ludlow appearing) for James B. Ludlow as one of the executors and trustees of the last will and testament of Thomas W. Ludlow, Jr., deceased, and especially for the purpose of objecting to the jurisdiction for Jacob F. Miller, the other surviving executor and trustee of the same will and testament, also for executors and trustees of the last will and testament of Henry M. Schieffelin, deceased, also for the Pure Oil Company at the request of Mr. Murphy; Augustus N. Hand for Annie Ludlow Winters and as counsel for

Mr. Townsend. After hearing evidence and arguments the hearing was adjourned until Tuesday, December 12, 1905, 2 p. m., at the office of the Board in Albany. (Grade Crossing Case No. 533.)

#### *Applications.*

Application of the New York Central and Hudson River Railroad Company for approval of the issue of \$17,192,500 capital stock of a total increase of \$35,000,000 capital stock referred to in an order of this Board, dated April 16, 1902. Ordered hearing set for Tuesday November 28, 1905, 12:30 p. m., at the Rathbun House, Elmira. (Case No. 2665.)

#### *Reports.*

In the matter of the recommendations of this Board as to the physical condition of the Schoharie Valley railway a report, dated November 8, 1905, from the superintendent of the grade crossing bureau, and a letter, dated November 17, 1905, to the company were submitted to the Board. Ordered filed. (No. 3—1905.)

In the matter of the recommendations of this Board as to the physical condition of the Buffalo, Attica and Arcade railroad a letter, dated November 16, 1905, was received from the company as to compliance with the recommendations. Ordered filed. (No. 15—1905.)

The Board adjourned.

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ELMIRA, NOVEMBER 28, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

#### *Hearings.*

Application of the New York Central and Hudson River Railroad Company for approval of the issue of seventeen million one hundred and ninety-two thousand five hundred dollars (\$17,192,500) capital stock of a total increase of thirty-five million dollars (\$35,000,000) capital stock referred to in an order of this Board, dated April 16, 1902. Ira A. Place for the applicant. After hearing evidence and arguments the hearing was closed. This hearing was set for 12:30 p. m., but was taken up at 10 a. m. (Case No. 2665.)

Adjourned hearing in the matter of the application of the Elmira, Corning and Waverly railway for a certificate, under section 59 of the Railroad Law. Charles A. Collins, Thomas O'Connor, A. C. Wade and F. E. Hawkes for the applicant; A. C. Wade for the Waverly Sayre and Athens Traction Company in favor of the application; Boyd McDowell and Theodore R. Tuthill for the Chemung Valley Traction Company in opposition; Baldwin, Turnbull & Allison (Mr. Baldwin appearing) for Hans Peterson and other property owners in opposition; Seymour Lowman for the village of Wellsburg, town of Chemung, town of Ashland and town of Southport in opposition; Edgar Sebring for the highway commissioner of the town of Barton in opposition; H. S. Thayer for himself and others in opposition; Ross M. Lovell for the Erie Railroad Company and the Delaware, Lackawanna and Western Railroad Company; Diven & Diven for the Northern Central Railway Company. After hearing evidence and arguments the Board took a recess in this matter until 2 p. m. (Case No. 3412.)

Application of the Tunesassa and Bradford Railroad Company, under section 60 of the Railroad Law, for a determination of the manner in which its railroad (proposed to be constructed) shall cross highways in the towns of Red House and Elko, Cattaraugus county. Cary, Rumsey & Hastings (Mr. Hastings appearing) for the applicant; no one else appeared. After hearing evidence and arguments the hearing was closed. The evidence in this matter was closed at the hearing on November 10, 1905, but at the request of the applicant this hearing was held to-day. (Grade Crossing Case No. 566.)

*Orders.*

Application of the Tunesassa and Bradford Railroad Company, under section 60 of the Railroad Law, for a determination of the manner in which its railroad (proposed to be constructed) shall cross highways in the towns of Red House and Elko, Cattaraugus county. Determination that the crossings shall be made at grade as shown by office original determination on file. (Grade Crossing Case No. 566.)

The Board took a recess until 2 p. m.

AFTER RECESS—2 P. M.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

The hearing in the application of the Elmira, Corning and Waverly Railway for a certificate, under section 59 of the Railroad Law, was resumed. Appearances as in the morning. After hearing evidence and arguments further the hearing was adjourned until Wednesday, November 29, 1905, 10 a. m., at the Rathbun House, Elmira. (Case No. 3412.)

The Board adjourned.

ELMIRA, NOVEMBER 29, 1905.

The Board met pursuant to adjournment. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

The hearing on the application of the Elmira, Corning and Waverly Railway for a certificate, under section 59 of the Railroad Law, was resumed. Appearances as yesterday. After hearing evidence and arguments a recess was taken until 1:30 p. m. (Case No. 3412.)

*Orders.*

Application of the New York Central and Hudson River Railroad Company for approval of the issue of seventeen million one hundred and ninety-two thousand five hundred dollars (\$17,192,500) capital stock of a total increase of thirty-five million dollars (\$35,000,000) capital stock referred to in an order of this Board, dated April 16, 1902. Granted. (Case No. 2665.)

The Board took a recess until 1:30 p. m.

AFTER RECESS—1:30 P. M.

The Board again met. Present, Commissioners Dunn, Baker and Dickey.

*Hearings.*

The hearing on the application of the Elmira, Corning and Waverly Railway for a certificate, under section 59 of the Railroad Law, was resumed. Appearance as in the morning. After hearing evidence and arguments it was determined that the applicant should, in executive session at the office of the Board in Albany on Wednesday, December 13, 1905, present evidence on the *bona fides* of the application and of the ability of the company to construct the railroad. At this hearing the applicant closed its case, except in rebuttal, and the Chemung Valley Traction Company put in evidence in opposition

and closed its evidence in opposition, and Seymour Lowman for the village of Wellsburg, town of Chemung, town of Ashland and town of Southport, and Edgar Sebring for the highway commissioner of the town of Barton, put in evidence in opposition and closed their evidence in opposition. Representatives of the Erie and the Delaware, Lackawanna and Western Railroad Companies are to inform the applicant, and other attorneys appearing and this Board, by December 5, whether or not said companies desire to put in evidence. If they do they will appear before the Board in Albany, on December 13 to ask that a hearing for said purpose be held at the New York office of this Board, room 406, Whitehall Building, 17 Battery place, New York city, on Tuesday, December 19, 1905, of which notice will be given. (Case No. 3412.)

The Board adjourned.

## CASES PENDING BEFORE THE BOARD OF RAILROAD COMMISSIONERS, JANUARY 30, 1906.

### COMPLAINTS.

President and Trustees of the Village of Falconer v. Lake Shore and Michigan Southern Railway Company and Erie Railroad Company. (Case No. 2896.)

Residents of Sherman Park v. New York Central and Hudson River Railroad Company. (Case No. 3393.)

Residents of Nunda, Canaseraga and vicinity v. Pennsylvania Railroad Company. (Case No. 3143.)

Chenango Valley Dairy Company v. Delaware, Lackawanna and Western Railroad Company. (Case No. 3143.)

Christopher Clarke v. New York and Queens County Railway Company. (Case No. 3222.)

William M. McMahon and J. Wadsworth Norton v. The Brooklyn Heights Railroad Company. (Case No. 3338.)

Woodlawn Taxpayers' Association v. Union Railway Company. (Case No. 3434.)

Caleb Bentley v. Rutland Railroad Company. (Case No. 3436.)

Report of Inspector of Board relative to condition of the Staten Island Rapid Transit company. (Case No. 3443.)

William P. Gregg et al. v. New York, Ontario and Western Railway Company. (Case No. 3455.)

W. B. Van Alstyne v. Albany and Hudson Railroad Company. (Case No. 3462.)

George J. Beyer v. The Brooklyn Heights Railroad Company. (Case No. 3466.)

Grace H. Rover v. The Brooklyn Heights Railroad Company. (Case No. 3470.)

Michael Thornton v. Rutland Railroad Company. (Case No. 3472.)

Citizens Improvement League of Kensington Parkville and vicinity v. The Brooklyn Heights Railroad Company. (Case No. 3476.)

### *Crossings of Steam Railroads.*

Westchester Electric Railroad Company. (Case No. 2575.)

West Side Railroad Company of Elmira. (Case No. 2587.)

Report relative to grade crossings of electric tracks of the Fonda, Johnstown and Gloversville railroad by steam railroad tracks. (Case No. 3215.)

Corning and Painted Post street railway. (Case No. 3316.)

Report relative to bridge erected by the Hudson Valley Railroad Company over tracks of The Delaware and Hudson Company at Broadway, Fort Edward. (Case No. 3321.)

Keeseville, Ausable Chasm and Lake Champlain Railroad Company. (Case No. 3315.)

Wallkill Transit Company. (Case No. 3340.)

New York City Inter-Borough Railway Company. (Case No. 3399.)

Auburn and Syracuse Electric Railroad Company. (Case No. 3405.)

Auburn and Northern Electric Railroad Company. (Case No. 3406.)

The Long Island Railroad Company (town of Islip). (Grade Crossing Case No. 155.)

The Long Island Railroad Company (town of Newtown). (Grade Crossing Case No. 211.)

The Long Island Railroad Company (town of Newtown). (Grade Crossing Case No. 222.)

The Long Island Railroad Company (town of Smithtown). (Grade Crossing Case No. 229.)

The Long Island Railroad Company (town of Brookhaven). (Grade Crossing Case No. 230.)

The Long Island Railroad Company (town of Brookhaven). (Grade Crossing Case No. 234.)

The Long Island Railroad Company (town of Islip). (Grade Crossing Case No. 235.)

The Long Island Railroad Company (town of Islip). (Grade Crossing Case No. 237.)

The Long Island Railroad Company (town of Babylon). (Grade Crossing Case No. 238.)

The Long Island Railroad Company (town of Newtown). (Grade Crossing Case No. 243.)

The Long Island Railroad Company (town of Newtown). (Grade Crossing Case No. 244.)

The Long Island Railroad Company (town of Babylon). (Grade Crossing Case No. 248.)

The Long Island Railroad Company (town of Brookhaven). (Grade Crossing Case No. 258.)

The Long Island Railroad Company (town of Islip). (Grade Crossing Case No. 259.)

The Long Island Railroad Company (town of Oyster Bay). (Grade Crossing Case No. 261.)

New York Central and Hudson River Railroad Company (city of Utica). (Grade Crossing Case No. 367.)

New York Central and Hudson River Railroad Company (city of Albany). (Grade Crossing Case No. 381.)

New York, Lackawanna and Western Railway Company (village of Elmira Heights). (Grade Crossing Case No. 384.)

Long Island Railroad Company (Jamaica, borough of Queens, city of New York). (Grade Crossing Case No. 391.)

Long Island Railroad Company (Jamaica, borough of Queens, city of New York). (Grade Crossing Case No. 392.)

New York, Lackawanna and Western Railway Company (village of Owego). (Grade Crossing Case No. 404.)

Long Island Railroad Company (town of Brookhaven). (Grade Crossing Case No. 406.)

Brooklyn Union Elevated Railroad Company (borough of Brooklyn, city of New York). (Grade Crossing Case No. 408.)

New York Central and Hudson River Railroad Company (village of Carthage). (Grade Crossing Case No. 413.)

New York Central and Hudson River Railroad Company (town of Newfane). (Grade Crossing Case No. 125.)

City of Rensselaer. (Grade Crossing Case No. 434.)

City of Oswego. (Grade Crossing Case No. 436.)

Town of Guilford. (Grade Crossing Case No. 454.)

New York, Ontario and Western Railway Company (town of Liberty). (Grade Crossing Case No. 457.)

New York, Ontario and Western Railway Company (town of New Windsor). (Grade Crossing Case No. 460.)

New York, Ontario and Western Railway Company (town of Hamptonburgh). (Grade Crossing Case No. 463.)

Village of Livonia. (Grade Crossing Case No. 469.)

Town of Warwick. (Grade Crossing Case No. 474.)

West Shore Railroad (New York Central and Hudson River Railroad Company, lessee). (City of Kingston). (Grade Crossing Case No. 475.)

Town of Blooming Grove. (Grade Crossing Case No. 476.)

New York Central and Hudson River Railroad Company. (City of Schenectady). (Grade Crossing Case No. 477.)



- New York Central and Hudson River Railroad Company (town of Brutus). (Grade Crossing Case No. 490.)  
 City of Oneida. (Grade Crossing Case No. 495.)  
 Town of Bethlehem. (Grade Crossing Case No. 505.)  
 City of New York. (Grade Crossing Case No. 510.)  
 New York Central and Hudson River Railroad Company (town of Sennett). (Grade Crossing Case No. 516.)  
 New York Central and Hudson River Railroad Company (town of Reading). (Grade Crossing Case No. 520.)  
 City of New York (Grade Crossing Case No. 521.)  
 Town of Southampton. (Grade Crossing Case No. 528.)  
 City of Utica and New York Central and Hudson River Railroad Company. (Grade Crossing Case No. 530.)  
 Village of La Salle. (Grade Crossing Case No. 532.)  
 New York Central and Hudson River Railroad Company and city of Yonkers. (Grade Crossing Case No. 533.)  
 New York Central and Hudson River Railroad Company and town of Eastchester. (Grade Crossing Case No. 534.)  
 New York Central and Hudson River Railroad Company (village of Tarrytown). (Grade Crossing Case No. 535.)  
 New York Central and Hudson River Railroad Company (village of Irvington). (Grade Crossing Case No. 536.)  
 Syracuse, Binghamton and New York Railroad Company (town of Cortlandville). (Grade Crossing Case No. 539.)  
 Village of Homer. (Grade Crossing Case No. 543.)  
 New York Central and Hudson River Railroad Company and city of Mount Vernon. (Grade Crossing Case No. 545.)  
 New York Central and Hudson River Railroad Company (village of Hastings-on-Hudson). (Grade Crossing Case No. 548.)  
 New York Central and Hudson River Railroad Company (village of Bronxville). (Grade Crossing Case No. 549.)  
 New York Central and Hudson River Railroad Company (village of Ossining). (Grade Crossing Case No. 550.)  
 New York Central and Hudson River Railroad Company (village of White Plains). (Grade Crossing Case No. 551.)  
 New York Central and Hudson River Railroad Company (towns of Scarsdale and Greenburgh). (Grade Crossing Case No. 552.)  
 New York Central and Hudson River Railroad Company (village of Tuckahoe). (Grade Crossing Case No. 553.)  
 The New York, New Haven and Hartford Railroad Company (town of South East). (Grade Crossing Case No. 556.)  
 The Central New England Railway Company (village of Pleasant Valley). (Grade Crossing Case No. 557.)  
 The New York, New Haven and Hartford Railroad Company and the New England Railroad Company. (Grade Crossing Case No. 559.)  
 Village of Westfield. (Grade Crossing Case No. 565.)  
 The Long Island Railroad Company (town of Brookhaven). (Grade Crossing Case No. 568.)  
 Village of Attica. (Grade Crossing Case No. 573.)  
 Delaware and Eastern Railroad Company. (Grade Crossing Case No. 574.)  
 Village of Waverly. (Grade Crossing Case No. 576.)  
 The New York, Auburn and Lansing Railroad Company (Grade Crossing Case No. 578.)  
 The Long Island Railroad Company (town of Islip). (Grade Crossing Case No. 583.)

*Application for Certificate Under Section 59 of the Railroad Law.*

- Elm Street Connecting Railway Company. (Case No. 2281.)  
 Lake Keuka and East Side Railroad Company. (Case No. 2921.)  
 Chemung Valley Traction Company. (Case No. 3323.)  
 Cayuga Lake and Ithaca Railroad Company. (Case No. 3341.)  
 Elmira, Corning and Waverly Railway. (Case No. 3412.)

Buffalo, Lake Erie and Niagara Railroad Company. (Case No. 3432.)  
The Buffalo and Rochester Traction Company. (Case No. 3448.)  
The Williams Terminal Railway Company. (Case No. 3454.)  
Wallula and Oswegatchie Railroad Company. (Case No. 3465.)  
Geneva, Phelps and Newark Railroad Company. (Case No. 3473.)  
Buffalo Frontier Terminal Railroad Company. (Case No. 3082.)

*Application for Increase of Capital Stock.*

New York and Port Chester Railroad Company. (Case No. 3072.)

*Application for Consent to Issue of Mortgage.*

New York and Port Chester Railroad Company. (Case No. 3073.)

*Relative to Proposed Use of Third Rail Electric.*

New York Central and Hudson River Railroad Company. (Case No. 3379.)

*Relative to Some Other Safeguard or Device in Place of Warning Signals  
now in Use Between Mott Haven and Croton.*

New York Central and Hudson River Railroad Company. (Case No. 3390.)

## NEW COMPANIES.

*Formed under the Laws of the State of New York by filing Articles of Association.*

### SURFACE STEAM ROADS.

NAME OF COMPANY.	County in which operated.	Date when articles filed.	Length of road, miles.	Capital stock.
Delaware and Eastern Railroad Company.....	Delaware.....	Nov. 14, 1904	43	\$800,000
Buffalo Union Terminal Railroad Company.....	Erie.....	Nov. 23, 1904	7½	100,000
Coahuila Coal Company.....	Republic of Mexico.....	Dec. 2, 1904	25	250,000
Erie and Jersey Railroad Company.....	Orange.....	June 5, 1905	42	600,000
Buffalo, Lake Erie and Niagara Railroad Company.....	Erie.....	June 26, 1905	37	4,000,000
Genesee River Railroad Company.....	Livingston and Allegany.....	Aug. 23, 1905	34	350,000
The Wallula and Oswegatchie Railroad Company.....	Lewis.....	Oct. 12, 1905	6	60,000

### SURFACE STREET.

Buffalo and Rochester Railway Company.....	Erie.....	Dec. 8, 1904	60.61	3,000,000
Eastern New York Railroad Company.....	Saratoga.....	Dec. 14, 1904	10	100,000
Hornellville, Bath and Lake Keuka Railway Company.....	Steuben.....	Feb. 23, 1905	5	50,000
Chemung Valley Traction Company.....	Chemung and Tioga.....	Feb. 28, 1905	18½	700,000
The Corry, Findley Lake and Northeast Railway.....	Chautauqua.....	Mar. 2, 1905	13	130,000
Bronx, Yonkers and White Plains Railway Company.....	Westchester.....	Mar. 3, 1905	11	110,000
Findley Lake and State Line Street Railway Company.....	Chautauqua.....	Mar. 25, 1905	13	130,000
Upper Hudson Electric and R. R. Company. (Amended certificate).....	Albany and Greene.....	June 3, 1905	25	500,000
The Auburn and Ithaca Traction Company.....	Cayuga and Tompkins.....	July 3, 1905	25	400,000
Tianderoga Union Terminal Railroad Company.....	Essex.....	July 5, 1905	5	50,000
Niagara Falls and Lockport Electric Railway Company.....	Niagara.....	July 28, 1905	20	200,000
The Williams Terminal Railway Company.....	Kings.....	July 29, 1905	900 ft.	10,000
Syracuse Northern Traction Company.....	Onondaga and Madison.....	Aug. 14, 1905	27	1,000,000
Westfield Street Railway.....	Chautauqua.....	Aug. 24, 1905	*	40,000
Elmira, Corning and Waverly Railway.....	Tioga and Steuben.....	Aug. 30, 1905	37	2,500,000
Tunesassa and Bradford Railroad Company.....	Cattaraugus.....	Sept. 1, 1905	5	50,000
Syracuse, Lake Shore and Northern R. R. Company.....	Onondaga.....	Sept. 9, 1905	15	2,250,000
Rome and Oneida Electric Railway.....	Oneida and Madison.....	Oct. 2, 1905	13	350,000
The Buffalo and Rochester Traction Company.....	Erie, Genesee, Livingston and Monroe.....	Oct. 16, 1905	60½	3,500,000

### UNDERGROUND TUNNEL.

Manhattan and Long Island Railroad Company.....	New York, Queens, Nassau and Suffolk.....	Sept. 15, 1905	80	10,000,000
Interstate Tunnel Railway Company of New York.....	New York.....	Sept. 20, 1905	2	7,500,000

\* Not stated.

## COMPANIES CONSOLIDATED.

The following corporations were consolidated and name changed during the year, as follows, viz.:

### STREET SURFACE ROADS.

NAME OF OLD COMPANY.	Name of present company.	Certificates filed.	Capital stock.
The Buffalo, Gardenville and Ebenezer Railway; The Buffalo Southern Railway Company.....	The Buffalo Southern Railway Company.....	Nov. 5, 1904	\$2,000,000
New York and Albany Railroad Company; Schenectady and Albany Railroad Company; New York Northern Railroad Company.....	New York Canadian Pacific Railway Company.....	Feb. 28, 1905	10,150,000
Albion Electric Railway; Albion and Rochester Railway; Albion and Lockport Railway.....	Buffalo, Lockport and Rochester Railway Co.....	June 23, 1905	500,000

# **CERTIFICATE UNDER SECTION 59 OF THE RAILROAD LAW.**

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The following companies, which have been granted certificates of public convenience and a necessity by the Board of Railroad Commissioners under section 59 of the Railroad Law, have filed such certificates in the Secretary of State's office, between October 31, 1904, and November 1, 1905:

## **SURFACE STEAM.**

### **ERIE AND JERSEY RAILROAD COMPANY.**

Certificate filed in office of Secretary of State, June 29, 1905.

### **DELAWARE AND EASTERN RAILROAD COMPANY.**

Certificate filed in office of Secretary of State, August 14, 1905.

## **STREET SURFACE.**

### **AUBURN AND NORTHERN ELECTRIC RAILROAD COMPANY.**

Certificate filed in office of Secretary of State, March 11, 1905.

### **BUFFALO, BATAVIA AND ROCHESTER ELECTRIC RAILWAY COMPANY.**

Certificate filed in office of Secretary of State, June 20, 1905.

### **ALBION AND LOCKPORT RAILWAY.**

Certificate filed in office of Secretary of State, June 21, 1905.

### **ALBION AND ROCHESTER RAILWAY.**

Certificate filed in office of Secretary of State, June 21, 1905.

### **BUFFALO, NIAGARA FALLS AND ROCHESTER RAILWAY COMPANY.**

Certificate filed in office of Secretary of State, August 14, 1905.

## **UNDERGROUND TUNNEL.**

### **NEW YORK AND JERSEY RAILROAD COMPANY.**

Certificate filed in office of Secretary of State, June 29, 1905.

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## EXTENSION OF ROUTES.

NAME OF ROAD.	Extension filed.	Length of extension.
The Olean Street Railway Company.....	Nov. 10, 1904	1½ miles.
East Side Traction Company.....	Dec. 5, 1904	3 miles.
Jamestown Street Railway Company.....	Dec. 16, 1904	500 feet.
Forest Park Railway Company.....	Jan. 31, 1905	.....
Corning and Painted Post Street Railway.....	Mar. 7, 1905	11½ miles.
Rochester Railway Company.....	Mar. 21, 1905	1,250 feet.
The Waverly, Sayre and Athens Traction Company.....	April 17, 1905	.....
Syracuse and South Bay Railway Company.....	April 19, 1905	2,380 feet.
New York City Interborough Railway Company.....	April 25, 1905	.....
Catskill Electric Railway Company.....	May 5, 1905	.....
The Chautauqua Traction Company.....	May 8, 1905	8½ miles.
The Waverly, Sayre and Athens Traction Company.....	May 16, 1905	20½ miles.
Geneva, Waterloo, Seneca Falls and Cayuga Lake Traction Company.....	May 24, 1905	6,140 feet.
Geneva, Waterloo, Seneca Falls and Cayuga Lake Traction Company.....	May 24, 1905	70,560 feet.
Southern Boulevard Railroad Company.....	May 31, 1905	.....
Union Railway Company of New York City.....	May 31, 1905	.....
International Railway Company.....	June 3, 1905	6,400 feet.
International Railway Company.....	June 3, 1905	13,400 feet.
Auburn and Northern Electric Railroad Company.....	June 6, 1905	1 mile.
Syracuse and South Bay Railway Company.....	June 13, 1905	947 feet.
The Nassau Electric Railroad Company.....	June 14, 1905	.....
The Cortland County Traction Company.....	June 1, 1905	4½ miles.
New York City Interborough Railway Company.....	June 22, 1905	.....
Catskill Electric Railway Company.....	June 28, 1905	.....
International Railway Company.....	June 30, 1905	6,300 feet.
The Glen Cove Railroad Company.....	July 21, 1905	8,493 feet.
The Electric City Railway Company.....	July 10, 1905	.....
International Railway Company.....	Oct. 6, 1905	7,700 feet.
New York and Stamford Railway Company.....	Oct. 10, 1905	10 miles.
International Railway Company.....	Oct. 14, 1905	12,300 feet.

## COMPANIES REORGANIZED.

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"Sodus Bay and Corning Railroad Company" sold January 12, 1905, and reorganized as

CORNING, KEUKA LAKE AND ONTARIO RAILWAY COMPANY.

Capital stock, \$1,500,000.

Certificate filed in office of Secretary of State, January 14, 1905.

"New York and Ottawa Railway Company" sold December 22, 1904, and reorganized as

NEW YORK AND OTTAWA RAILWAY COMPANY.

Capital stock \$1,250,000.

Certificate filed in office of Secretary of State, January 19, 1905.

"Hudson Tunnel Railway Company" sold February 28, 1898, and reorganized as

NEW YORK AND JERSEY RAILROAD COMPANY.

Capital stock \$8,500,000.

Amended certificate filed in office of Secretary of State, March 24, 1905.

"Middletown-Goshen Electric Railway Company" sold December 31, 1904, and reorganized as

WALLKILL TRANSIT COMPANY.

Capital stock \$350,000.

Certificate filed in office of Secretary of State, March 30, 1905.

"Marcellus Electric Railroad Company" sold February 14, 1903, and reorganized as

MARCELLUS AND OTISCO LAKE RAILWAY COMPANY.

Capital stock \$200,000.

Certificate filed in office of Secretary of State, May 25, 1905.

## LEASED ROADS.

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The following roads were leased during the year, viz:

“United Traction Company”  
leased in city of Rensselaer, December 17, 1904, to

COHOES RAILWAY COMPANY.

Lease filed in office of Secretary of State December 19, 1904.

“Syracuse and Oneida Lake Electric Railway Company”  
was leased January 17, 1905, to

SYRACUSE RAPID TRANSIT RAILWAY COMPANY.

Lease filed in office of Secretary of State May 4, 1905.

“Beech Creek Extension Railroad Company”  
was leased June 22, 1905, to

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

Lease filed in office of Secretary of State June 2, 1905.

“The Chateaugay and Lake Placid Railway Company”  
was leased July 1, 1905, to

THE DELAWARE AND HUDSON COMPANY.

Lease filed in office of Secretary of State August 4, 1905.

“New York and Stamford Railway Company”  
was leased September 21, 1905, to

THE CONSOLIDATED RAILWAY COMPANY. (Connecticut.)

Lease filed in office of Secretary of State October 20, 1905.



## INCREASE OF CAPITAL STOCK.

The following companies filed certificates of increased capital stock during the year, to wit:

NAME OF ROAD.	From	To	Filed with Secretary of State.
New York, Westchester and Boston Railway Company.....	\$1,000,000	\$20,000,000	Nov. 17, 1904
The Chateaugay and Lake Placid Railway Company.....	450,000	2,450,000	Dec. 15, 1904
New York and Canada Railroad Company.....	4,000,000	9,000,000	Dec. 16, 1904
Hamburg Railway Company.....	200,000	350,000	Jan. 28, 1905
Rochester and Pittsburgh Railway Company.....	18,000,000	21,000,000	Mar. 10, 1905
Eastern New York Railroad Company.....	100,000	1,750,000	Mar. 28, 1905
Erie Railroad Company.....	177,000,000	197,000,000	April 6, 1905
Rochester Railway Company.....	5,500,000	6,000,000	April 19, 1905
New York City Interborough Railway Company.....	400,000	5,000,000	April 25, 1905
Rochester, Syracuse and Eastern Railroad Company.....	1,000,000	3,500,000	April 26, 1905
Bush Terminal Railroad Company.....	15,000	20,000	April 29, 1905
The Lowville and Beaver River Railroad Company.....	150,000	200,000	Sept. 13, 1905

## CLASSIFICATION OF STOCK.

ROCHESTER, SYRACUSE AND EASTERN RAILROAD COMPANY,  
at special meeting, December 28, 1904, divided the capital stock of the company into \$2,500,000 of preferred and \$1,000,000 of common.

Certificate filed in office of Secretary of State, January 4, 1905.

## CHANGE OF ROUTE.

FOREST PARK RAILWAY COMPANY.

Certificate of change filed in office of Secretary of State, January 31, 1905.

## CHANGE OF PLACE OF BUSINESS.

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THE ROCHESTER, SHAWMUT AND NORTHERN RAILROAD COMPANY.

From No. 45 Wall street. New York city, to Angelica, Allegany county, New York.

Certificate (amended) filed in office of Secretary of State, January 14, 1905.

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## INCREASE OF NUMBER OF DIRECTORS.

NAME OF COMPANY.	From	To	Filed with the Secretary of State.
Port Jervis Electric Light, Power, Gas and Railroad Company...	5	7	Jan. 19, 1905
Corning and Painted Post Street Railway.....	9	15	Feb. 6, 1905
New York, Westchester and Boston Railway Company.....	13	15	April 25, 1905
Catskill Electric Railway Company.....	9	13	May 15, 1905

## REDUCTION OF NUMBER OF DIRECTORS.

NAME OF COMPANY	From	To	Filed with the Secretary of State.
New York and Long Island Railroad Company.....	13	9	Dec. 8, 1905
New York, Brooklyn and Manhattan Beach Railway Company..	13	9	July 22, 1905

## CERTIFICATE OF ABANDONMENT OF PART OF ROUTE.

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INTERNATIONAL RAILWAY COMPANY, abandoned portion of its line in city of Buffalo.

Certificate filed in office of Secretary of State, May 10, 1905.

## **CERTIFICATE OF MERGER.**

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The following companies have been merged during the year:

"The Shawmut Connecting Railroad Company," merged in

THE PITTSBURG, SHAWMUT AND NORTHERN RAILROAD COMPANY.

Certificate of merger filed in office of Secretary of State, January 9 1905.

"The Cortland County Lighting Company," merged in

THE CORTLAND COUNTY TRACTION COMPANY.

Certificate of merger filed in office of Secretary of State, June 21, 1905.

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## **ANNULMENT OF LEASE.**

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At meeting held June 30, 1904, the lease existing between THE NASSAU ELECTRIC RAILWAY COMPANY and THE BROOKLYN HEIGHTS RAILROAD COMPANY was annulled.

Certificate of annulment filed in office of Secretary of State, June 28, 1905.

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## **CERTIFICATE IN RESPECT OF ROUTES.**

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NEW YORK CITY INTERBOROUGH RAILWAY COMPANY, as to convenience and a necessity in respect of certain routes in New York city.

Certificate filed in office of Secretary of State, January 17, 1905.

## ACQUISITION OF STOCK.

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THE ELMIRA, CORTLAND AND NORTHERN RAILROAD COMPANY, at meeting held on February 6, 1905, acquired the stock of "The Canastota Northern Railroad Company."

Certificate of acquisition filed in office of Secretary of State, February 7, 1905.

THE LEHIGH VALLEY RAILWAY COMPANY, at meeting held on February 10, 1905, acquired the stock of "The Canal Railroad Company."

Certificate of acquisition filed in office of Secretary of State, February 17, 1905.

THE LEHIGH VALLEY RAILWAY COMPANY, at meeting held February 10, 1905, acquired the stock of "The Elmira, Cortland and Northern Railroad Company."

Certificate of acquisition filed in office of Secretary of State, February 17, 1905.

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## CONSENT OF STOCKHOLDERS TO ISSUE OF PREFERRED STOCK.

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NEW YORK AND CANADA RAILROAD COMPANY,  
for issue of \$5,000,000 of preferred stock of "The Delaware and Hudson Company," in payment *pro tanto* of indebtedness.

Certificate of notice of meeting filed in office of Secretary of State, December 16, 1904.

# ENACTMENTS RELATING TO RAILROADS,

1905.

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Chap. 2. An act to amend chapter forty-five of the laws of nineteen hundred, entitled "An act to extend the time within which The Buffalo, Garden-ville and Ebenezer railway shall finish its road and put it in operation beyond its present construction and operation," in relation to the time limitation.

Chap. 9. An act to amend chapter one hundred and forty-one of the laws of nineteen hundred and four, entitled "An act to authorize the town board of the town of Hancock, Delaware county, to issue bonds of such town to provide for the construction of an iron bridge over the Beaverkill river therein," in relation to the time of payment of such bonds.

Chap. 20. An act to amend the county law, relative to the compensation of supervisors in Niagara county.

Chap. 35. An act to amend the stock corporation law relative to order of court upon application by a municipal corporation for order to issue new in place of lost certificate of stock.

Chap. 45. An act to legalize bonds of the village of Painted Post to be issued for the purpose contemplated by chapter four hundred and eighty-three of the laws of nineteen hundred and four and to legalize all proceedings in relation thereto, including the appointment and proceedings of the board of river commissioners thereunder and the special election of the inhabitants of said village held thereunder on the twenty-fifth day of June, nineteen hundred and four.

Chap. 63. An act to amend chapter three hundred and twenty-eight of the laws of eighteen hundred and eighty-six, entitled "An act to establish a fire district in a part of the town of Waterford and to provide for a supply of water and to purchase apparatus or hose or both for extinguishment of fires therein and to pay for the same by assessment, levy and collection therefor upon such district and directing the care, management and control of the same" in relation to boundaries.

Chap. 81. An act authorizing the city of Utica to borrow the sum of sixty thousand dollars for the purpose of completing the changing of the channel of the Mohawk river between said city and the town of Deerfield in Oneida county, for the acquisition of lands therefor, the payment of damages incurred thereby and expenses connected therewith, and to issue bonds therefor and providing for the payment thereof.

Chap. 90. An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled "An act to revise the charter of the city of Buffalo," and the several acts amendatory thereof and supplementary thereto, in relation to the annual assessment rolls.

Chap. 116. An act to amend chapter one hundred and ninety-five of the laws of eighteen hundred and eighty-four entitled "An act to amend chapter one hundred and forty of the laws of eighteen hundred and fifty-three, entitled 'An act to consolidate and amend the several acts relating to the village of Batavia, to alter the bounds and to enlarge the powers of the corporation of said village' and the several acts amendatory thereof," generally.

Chap. 134. An act to extend the boundaries of the city of Rochester, and to include therein the village of Brighton and a portion of the town of Brighton.

Chap. 142. An act to revise the charter of the city of Corning.

Chap. 171. An act to amend section seventy-e of the agriculture law, entitled "An act in relation to agriculture constituting articles one, two, three, four and five of chapter thirty-three of the general laws."

Chap. 174. An act to amend chapter five hundred and seventeen of the laws of eighteen hundred and seventy-one, entitled "An act to authorize the construction of a railroad from the south side railroad of Long Island, at a point in the village of Babylon, Suffolk county, to the steamboat dock, at the southern part of said village," in relation to the relaying of rails and location of track or tracks of the company, and in relation to its motive power.

Chap. 185. An act to amend chapter twenty-six of the laws of eighteen hundred and eighty-five, entitled "An act to revise, amend and consolidate the several acts relative to the city of Syracuse, and to revise and amend the charter of said city" relative to ward boundaries.

Chap. 205. An act to amend chapter one hundred and forty-two of the laws of eighteen hundred and seventy-nine, entitled "An act to amend chapter one hundred and twenty-five of the laws of eighteen hundred and forty-two, entitled 'An act to condense and amend the several acts relating to the village of Albion,' and the several acts amendatory thereof," generally.

Chap. 222. An act to prevent the construction, operation and maintenance of any further railroads in the State road known as the Buffalo and Whites-Corners plank road in Erie county.

Chap. 241. An act to amend the tax law by providing for a tax on transfers of stock.

Chap. 242. An act to amend the penal code, in relation to forging state stamps.

Chap. 244. An act to amend the county law, in relation to the power of the board of supervisors of any county to sell, assign, transfer or set over a judgment obtained in the court of claims by such county against the state of New York.

Chap. 256. An act to amend the general corporation law, in relation to the consent of stockholders requisite to an extension of corporate existence.

Chap. 281. An act to amend section two hundred and fifty-four of the tax law, in relation to costs and disbursements in certiorari proceedings.

Chap. 285. An act to amend the forest, fish and game law, in relation to the duties of the superintendent of forest fire wardens and game protectors.

Chap. 307. An act to extend the time of the Watertown and Carthage traction company to complete the construction of its road and extensions, and put the same in operation.

Chap. 318. An act to amend the forest, fish and game law, in relation to penalties.

Chap. 319. An act to amend the forest, fish and game law, in relation to the protection of land turtles and wild black bear.

Chap. 348. An act to amend the tax law in relation to proceedings or suits brought to collect personal taxes in arrears.

Chap. 352. An act to amend chapter four hundred and thirty, of the laws of nineteen hundred and three, entitled "An act authorizing the

paving of streets and portions thereof, within the city of Auburn, and providing the method and means of payment therefor."

Chap. 356. An act to amend chapter fifty-three of the laws of eighteen hundred and seventy-nine, entitled "An act to revise the charter of the city of Auburn, and the several acts amendatory thereof."

Chap. 357. An act to revise the several acts relative to the city of Tonawanda.

Chap. 358. An act for the regulation of fares of electric railroads in and between the cities of Rensselaer and Albany, New York, and to provide for the issue of transfer tickets thereon.

Chap. 371. An act to amend chapter six hundred and sixty-six of the laws of eighteen hundred and ninety-three, entitled "An act to revise, amend and consolidate the several acts relating to the village of Canandaigua, and to repeal certain acts and parts of acts," and the acts amendatory thereof, in relation to meetings of board of trustees, a board of street commissioners, a board of water commissioners, the office of treasurer and collector, compensation of assessors, and assessments.

Chap. 378. An act to amend chapter six hundred and eighty-six of the laws of eighteen hundred and ninety-four, entitled, as amended, "An act for the preservation of macadamized and other public highways in the counties of Queens and Nassau," by exempting certain roads from certain of the provisions thereof.

Chap. 381. An act to amend section eight of chapter one hundred and forty-six of the laws of eighteen hundred and fifty-six, entitled "An act authorizing the construction of a bridge across the Hudson river at Albany."

Chap. 401. An act to amend the banking law, relative to securities in which deposits in savings banks may be invested.

Chap. 415. An act to amend the stock corporation law, in relation to annual reports of corporations.

Chap. 453. An act to amend the railroad law, in relation to the protection of street railroad employees in the counties of Kings and Queens.

Chap. 460. An act to amend chapter fifty-three of the laws of eighteen hundred and seventy-nine, entitled "An act to revise the charter of the city of Auburn," relative to revising several sections of the said charter.

Chap. 461. An act to amend chapter three hundred sixty of the laws of eighteen hundred and ninety-seven, entitled "An act to incorporate the city of Geneva," generally.

Chap. 462. An act to amend chapter three hundred sixty of the laws of eighteen hundred ninety-seven, entitled "An act to incorporate the city of Geneva," in relation to the location of tracks of street surface railroads.

Chap. 489. An act to amend the stock corporation law, in relation to consent to change place of business.

Chap. 513. An act to amend the municipal court act of the city of New York, relative to the jurisdiction of such court.

Chap. 534. An act in relation to Greene avenue and Madison street in the borough of Brooklyn, city of New York.

Chap. 535. An act in relation to Cornelia street, in the borough of Brooklyn, city of New York.

Chap. 547. An act to authorize the city of Buffalo to convey by quit-claim deed to the Delaware, Lackawanna and Western railroad company

and the New York, Lackawanna and Western railway company a part of Liberty street in said city.

Chap. 575. An act to amend chapter six hundred and seventy-one of the laws of eighteen hundred and ninety-two, entitled "An act to revise, consolidate and amend the several acts relating to the government of the city of Cohoes," in relation to local improvements.

Chap. 578. An act to amend chapter three hundred and seventy-one of the laws of nineteen hundred and three, entitled "An act to amend and consolidate the several acts relative to the city of Schenectady," in relation to the boundaries of the ninth ward.

Chap. 579. An act to amend chapter eighty-seven of the laws of eighteen hundred and ninety-three, entitled "An act to amend chapter three hundred and thirty-five of the laws of eighteen hundred and sixty-eight, entitled 'An act to incorporate the city of Ogdensburg,' and acts amending the same."

Chap. 584. An act to authorize the grant by the city of New York to the Spuyten Duyvil and Port Morris railroad company and to the New York Central and Hudson river railroad company, or either of them, of lands and lands under water lying between the southerly boundary line of the land of the Spuyten Duyvil and Port Morris railroad company at East one hundred and forty-ninth street and the northerly boundary line of the city of New York, for railroad purposes.

Chap. 589. An act to amend chapter five hundred and seven of the laws of nineteen hundred and three, entitled "An act to abolish certain grade crossings of highways and railroads in the borough of Brooklyn in the city of New York and county of Kings, and providing for necessary changes in the grades of highways, streets and avenues, and of portions of the railroad and right of way of the New York, Brooklyn and Manhattan Beach railway company, leased to the Long Island railroad company, and of the Brooklyn union elevated railroad company, leased to the Brooklyn Heights railroad company, so as to abolish present and avoid future crossings at grade, and providing means for the payment for such alterations or changes as amended by chapter six hundred and three of the laws of nineteen hundred and four.

Chap. 593. An act to revise the charter of the city of Johnstown.

Chap. 599. An act to amend chapter four of the laws of eighteen hundred and ninety-one, entitled "An act to provide for rapid transit railways in cities of over one million inhabitants," as amended by chapter six hundred and sixteen of the laws of nineteen hundred, and further amended by chapter five hundred and forty-four, of the laws of nineteen hundred and two.

Chap. 611. An act to amend the railroad law, in relation to the inspection of locomotive boilers.

Chap. 621. An act to amend section three hundred and fifteen of the Greater New York charter, with respect to the duties of the police department and force.

Chap. 628. An act to authorize and direct the closing of Cromwell's creek and the grant of lands under the waters thereof between East One hundred and sixty-first street and the bulkhead line of the Harlem river, in the city of New York, and the filling in, ownership and use thereof as fast land.

Chap. 629. An act to amend sections seventeen, twenty-eight, forty-one, forty-three, forty-four, forty-five, forty-seven, forty-eight, fifty, seventy-two, seventy-three, seventy-four, seventy-five and two hundred and forty-two of the Greater New York charter, with respect to the powers of the board of aldermen and the board of estimate and apportionment.



Chap. 630. An act to amend section seventy-four of the Greater New York charter, with respect to the powers of the board of aldermen and the board of estimate and apportionment.

Chap. 631. An act to further amend chapter four of the laws of eighteen hundred and ninety-one entitled "An act to provide for rapid transit railways in cities of over one million inhabitants."

Chap. 634. An act to amend chapter four hundred and twenty-three of the laws of nineteen hundred and three, entitled "An act to provide for the abolition, discontinuance and avoidance of certain grade crossings in the city of New York."

Chap. 635. An act to amend chapter five hundred and seven of the laws of nineteen hundred and three, entitled "An act to abolish certain grade crossings of highways and railroads in the borough of Brooklyn in the city of New York and county of Kings, and providing for necessary changes in the grades of highways, streets and avenues, and of portions of the railroad and right of way of the New York, Brooklyn and Manhattan Beach railway company, leased to the Long Island railroad company, and of the Brooklyn union elevated railroad company, leased to the Brooklyn Heights railroad company, so as to abolish present and avoid future crossings at grade, and providing means for the payment for such alterations or changes."

Chap. 636. An act to require the construction of an elevated railroad station at the corner of One hundred and thirtieth street and Eighth avenue, in the city of New York.

Chap. 641. An act to authorize the board of assessors of the city of New York to determine and allow damages sustained by owners of real property fronting upon the bridge over the Bronx river at Two hundred and thirty-third street in borough of the Bronx, New York city.

Chap. 644. An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled "An act to revise the charter of the city of Buffalo," relating to ward boundaries.

Chap. 645. An act to assess on the property benefited the cost and expense of constructing a bridge over the railroad tracks on Bronson avenue in the city of Rochester.

Chap. 650. An act to amend the railroad law, in relation to the consents of property owners to the construction of street railroads in the county of Kings.

Chap. 651. An act to amend the railroad law, in relation to the computation and payment of license fees and percentages of street surface railroad companies.

Chap. 652. An act to amend chapter four hundred and twenty-five of the laws of eighteen hundred and ninety-six, entitled "An act to amend the charter of the city of Poughkeepsie" relative to the officers of said city, their duties et cetera.

Chap. 664. An act to authorize the grade crossing commissioners of the city of Buffalo to investigate damages to the property owned by the estate of Mary Leng occasioned by the construction of Seneca street crossing in such city.

Chap. 669. An act to authorize the grant of lands under the waters of Pelham bay, in the city of New York, to the Harlem river and Port Chester railroad company, for its corporate purposes.

Chap. 670. An act authorizing the city of New York to grant to the Harlem River and Port Chester railroad company, land in Pelham Bay park and the Bronx and Pelham parkway, for its corporate purposes.

Chap. 672. An act to amend the highway law, in relation to the appointment of overseers in towns under the money system, and the removal of obstructions caused by snow in such towns.

Chap. 676. An act to assess the cost and expense of constructing a bridge over the railroad tracks on Main street east, in the city of Rochester on the property benefited thereby.

Chap. 680. An act to amend the liquor tax law in relation to local option, persons who shall not traffic in liquors, cancellation proceedings, convictions, and reports and fees of county clerks.

Chap. 685. An act to supplement the provisions of law relating to the department of public safety of the city of Syracuse.

Chap. 690. An act to extend the time of the New York Connecting railroad company to finish its road and put the same in operation.

Chap. 691. An act to extend the time of the New York Connecting railroad company to commence and complete the construction of its bridge across the East river, as authorized by chapter seven hundred and fifty-two of the laws of nineteen hundred.

Chap. 695. An act to amend the railroad law, in relation to approval of lease by stockholders.

Chap. 723. An act to establish a state water commission, to define its powers and duties, and making an appropriation therefor.

Chap. 724. An act to provide for an additional supply of pure and wholesome water for the city of New York; and for the acquisition of lands or interest therein, and for the construction of the necessary reservoirs, dams, aqueducts, filters, and other appurtenances for that purpose; and for the appointment of a commission with the powers and duties necessary and proper to attain these objects.

Chap. 727. An act to amend the railroad law in relation to the incorporation and powers of railroad corporations.

Chap. 728. An act to amend sections one hundred and fifty, one hundred and fifty-six, one hundred and sixty-nine and one hundred and seventy of the railroad law relative to the board of railroad commissioners.

Chap. 729. An act to amend the tax law in relation to the taxation of debts secured by mortgages.

Chap. 731. An act to provide for the widening of Pelham avenue and for the construction of a bridge to carry Pelham avenue as so widened over the tracks of the New York and Harlem railroad in the city of New York.

Chap. 745. An act to amend the stock corporation law in relation to the power to borrow money and mortgage property.

Chap. 747. An act to amend chapter five hundred and thirty-seven of the laws of eighteen hundred and ninety-three, entitled "An act providing for ascertaining and paying the amount of damages to lands and buildings, suffered by reason of change of grade of streets or avenues, made pursuant to chapter seven hundred and twenty-one of the laws of eighteen hundred and eighty-seven, providing for the depression of railroad tracks in the twenty-third and twenty-fourth wards of the city of New York or otherwise," as amended by chapter five hundred and sixty-seven of the laws of eighteen hundred and ninety-four, entitled "An act to amend chapter five hundred and thirty-seven of the laws of eighteen hundred and ninety-three, entitled 'An act providing for ascertaining and paying the amount of damages to lands and buildings suffered by reason of change of grade of streets or avenues, made pursuant to chapter seven hundred and twenty-one of the laws of eighteen hundred and eighty-seven, providing for the depression of

railroad tracks in the twenty-third and twenty-fourth wards in the city of New York or otherwise," relative to damages caused by change of grade in the borough of the Bronx (formerly the twenty-third and twenty-fourth wards), of the city of New York, by permitting the filing of additional claims, under the provisions of said chapter five hundred and thirty-seven of the laws of eighteen hundred and ninety-three as amended by chapter five hundred and sixty-seven of the laws of eighteen hundred and ninety-four, and to extend the time for filing such claims, and for the appointment of commissioners of appraisal.

Chap. 750. An act to amend the stock corporation law, in relation to change of number of directors.

Chap. 751. An act to amend the stock corporation law, in relation to alterations or extension of business.

# ALPHABETICAL LIST

## Of Companies Formed Under the Laws of This State.

Name of road.	When formed.	Name of road.	When formed.
Addison and Northern Pennsylv- vania .....	1882	Astoria, Blissville and Calvary Cemetery .....	1891
Addison, Osceola and Cowanesque Valley .....	1878	Astoria and Hunter's Point.....	1867
Addison and Pennsylvania.....	1892	Astoria and Hunter's Point.....	1877
Addison and Pennsylvania.....	1892	Astoria Street.....	1891
Addison and Pennsylvania.....	1887	Atlantic Avenue .....	1872
Addison and Susquehanna.....	1898	Atlantic Avenue Elevated.....	1890
Adirondack .....	1839	Atlantic Cable .....	1888
Adirondack .....	1863	Atlantic and Great Western.....	1859
Adirondack Estate Railroad Com- pany .....	1860	Atlantic and Great Western.....	1872
Adirondack Extension .....	1891	Atlantic and Great Western of New York .....	1872
Adirondack Lakes' Traction.....	1903	Atlantic and Great Western Rail- road Company of New York and Pennsylvania .....	1872
Adirondack and St. Lawrence.....	1890	Atlantic and Ontario .....	1871
Adirondack Railway .....	1882	Attica and Allegheny Valley.....	1852
Albany .....	1861	Attica and Arcade .....	1870
Albany .....	1863	Attica and Arcade .....	1880
Albany and Catskill.....	1903	Attica and Buffalo .....	1836
Albany County .....	1900	Attica and Freedom .....	1891
Albany, Bennington and Rutland..	1850	Attica and Hornellsville.....	1845
Albany and Boston .....	1862	Attica, Lockport and Lake Ontario.	1883
Albany and Boston .....	1864	Attica and Sheldon .....	1836
Albany, Greenbush and Bath.....	1895	Auburn City .....	1886
Albany, Helderberg and Schoharie Electric .....	1895	Auburn and Canal .....	1832
Albany and Hudson .....	1899	Auburn and Deposit Air Line.....	1871
Albany and Hudson .....	1903	Auburn and Homer Midland .....	1872
Albany and Kenwood .....	1863	Auburn and Ithaca .....	1889
Albany and Lackawanna .....	1866	Auburn and Ithaca Traction.....	1905
Albany and New York .....	1866	Auburn Inter-Urban Electric.....	1895
Albany and Northern .....	1851	Auburn and Northern Electric.....	1904
Albany Railroad .....	1863	Auburn and Owasco Lake .....	1871
Albany Railway .....	1863	Auburn and Owasco Lake .....	1880
Albany, Sandlake and Stephentown.	1871	Auburn and Owasco Lake Electric.	1889
Albany and Saratoga .....	1852	Auburn and Port Byron.....	1869
Albany and Saratoga Springs.....	1853	Auburn and Rochester .....	1836
Albany and Schenectady .....	1847	Auburn and Syracuse .....	1834
Albany and Schenectady Traction..	1900	Auburn and Syracuse Electric.....	1902
Albany and Suburban .....	1895	Auburn and Western .....	1897
Albany and Susquehanna .....	1851	Auburn and Willow Brook.....	1872
Albany Terminal .....	1888	Aurora and Buffalo.....	1832
Albany and Vermont.....	1859	Avenue C .....	1869
Albany, Vermont and Canada.....	1859	Avon, Genesee and Mount Morris..	1860
Albany and West Stockbridge.....	1836	Babylon .....	1871
Albion Electric .....	1902	Babylon and North Shore.....	1898
Albion and Lockport .....	1904	Baldwinsville Branch .....	1886
Albion and Rochester .....	1904	Baldwinsville and Liverpool.....	1898
Albion and Tonawanda .....	1832	Ballston Electric .....	1895
Allegheny Central .....	1881	Ballston Terminal .....	1896
Allegheny Central .....	1882	Batavia, Albion and Lake Ontario.	1883
Allegheny and Kinzua.....	1888	Batavia, Attica and Salamanca.....	1867
Allegheny and Kinzua.....	1890	Batavia and Cheektowaga .....	1850
American Railroad Company of Porto Rico (Foreign) .....	1902	Batavia and Northern .....	1894
Amityville and Huntington.....	1903	Batavia and Northern .....	1895
Amsterdam, Chuctanunda and Northern .....	1879	Batavia Street .....	1895
Amsterdam Electric .....	1888	Bath and Crooked Lake .....	1831
Amsterdam and Hagaman Traction.	1900	Bath and Hammondsport .....	1872
Amsterdam, Johnstown and Glovers- ville .....	1894	Bath and Lake Keuka .....	1895
Amsterdam Street.....	1873	Battenkill .....	1902
Arcade and Genesee River.....	1872	Bay Ridge Sea Shore .....	1873
		Bay Ridge and Sea Side.....	1871
		Bay Shore .....	1866
		Beacon Mountain.....	1902

Name of road.	When formed.
Bedford and Eastern.....	1899
Beldon Point.....	1892
Belmont and Buffalo.....	1871
Bennington and Hoosick Valley.....	1897
Berney Traction.....	1902
Binghamton.....	1892
Binghamton.....	1894
Binghamton.....	1902
Binghamton Central.....	1883
Binghamton, Dushore and Williams- port.....	1872
Binghamton, Lestershire and Union.....	1894
Binghamton and Port Dickinson.....	1868
Binghamton and Southern.....	1903
Binghamton and Southwestern.....	1887
Binghamton Street.....	1890
Binghamton and Susquehanna.....	1833
Binghamton State Line.....	1892
Binghamton and Williamsport.....	1882
Black River.....	1836
Black River Company.....	1832
Black River Traction.....	1897
Black River Traction.....	1901
Black River and Morristown.....	1870
Black River and St. Lawrence.....	1868
Black River and Utica.....	1853
Black River and Woodhull.....	1868
Bleecker Street and Fulton Ferry.....	1864
Blossburgh and Corning.....	1854
Bombay and Molra.....	1898
Boonville and Constableville.....	1868
Boonville and Ontario.....	1868
Boonville and Port Ontario.....	1873
Boonville and Turin.....	1866
Boston and Albany.....	1870
Boston, Albany and Schenectady.....	1877
Boston, Hartford and Erie.....	1864
Boston, Hartford and Erie Extension.....	1864
Boston, Hartford and Erie Ferry Extension.....	1864
Boston and Henderson Harbor.....	1872
Boston, Hoosac Tunnel and Albany.....	1873
Boston, Hoosic Tunnel and Western.....	1877
Boston, Hoosic Tunnel and Western Railway.....	1881
Boston, New York and Chicago.....	1874
Boston, New York and Western.....	1880
Boston, Rome and Oswego.....	1871
Boston, Saratoga and Western.....	1870
Boutenberg.....	1886
Bowery Bay and Hunter's Point.....	1882
Bradford, Eldred and Cuba.....	1881
Branchport and Penn Yan.....	1885
Breslau and Fire Island.....	1872
Brewerton and Syracuse.....	1836
Bridge Tunnel.....	1886
Brighton (No. 1).....	1880
Brighton (No. 2).....	1880
Brighton Beach.....	1879
Brighton Beach and New York.....	1880
Brighton and Bensonhurst.....	1892
Broad Street (New York).....	1890
Broadway and Bowery Bay.....	1883
Broadway (Brooklyn).....	1858
Broadway (New York).....	1884
Broadway (New York).....	1890
Broadway Central Underground.....	1880
Broadway Ferry and Metropolitan Avenue.....	1892
Broadway, Lexington and Fifth Avenue.....	1884
Broadway and Rockaway Beach.....	1880
Broadway and Seventh Avenue.....	1884
Broadway Surface.....	1884
Broadway Underground.....	1880
Broadway Underground Connecting.....	1880
Broadway and Yonkers Patent.....	1866
Brookport, Niagara and Rochester.....	1902
Brocton Street.....	1894
Brookville and St. Lawrence Bridge Company.....	1897

Name of road.	When formed.
Brook Avenue.....	1885
Brookfield.....	1888
Brooklyn, Bath and Coney Island.....	1862
Brooklyn, Bath and Coney Island.....	1879
Brooklyn, Bath and West End.....	1885
Brooklyn, Bergen Beach and Canar- sie.....	1893
Brooklyn Bridge, Prospect Park and Eastern.....	1895
Brooklyn Bridge and South Ferry.....	1887
Brooklyn Bridge and South Shore.....	1886
Brooklyn and Brighton Beach.....	1887
Brooklyn, Bushwick and Queens County.....	1885
Brooklyn Cable.....	1883
Brooklyn Cable.....	1886
Brooklyn and Canarsie.....	1865
Brooklyn Central.....	1859
Brooklyn Central and Jamaica.....	1860
Brooklyn City.....	1853
Brooklyn City Elevated.....	1875
Brooklyn City Elevated.....	1879
Brooklyn City, Hunter's Point and Prospect Park.....	1868
Brooklyn City and Newtown.....	1860
Brooklyn City and Ridgewood.....	1861
Brooklyn City and Rockaway.....	1862
Brooklyn and Coney Island.....	1876
Brooklyn and Coney Island Central.....	1877
Brooklyn, Coney Island and Rock- away.....	1878
Brooklyn Crosstown.....	1872
Brooklyn, East New York and Rock- away.....	1864
Brooklyn Elevated.....	1884
Brooklyn Elevated and Atlantic Beach.....	1879
Brooklyn Elevated and Railway Construction Company.....	1882
Brooklyn Elevated Silent Safety.....	1874
Brooklyn, Flatbush and Coney Island.....	1859
Brooklyn, Flatbush and Coney Island.....	1886
Brooklyn, Flatbush and Coney Island Railway.....	1877
Brooklyn, Flatbush and Rockaway Beach.....	1879
Brooklyn, Fort Hamilton, Bath and Coney Island.....	1836
Brooklyn, Fort Hamilton and Coney Island.....	1867
Brooklyn, Fort Hamilton and Coney Island.....	1881
Brooklyn Heights.....	1887
Brooklyn Heights Cable.....	1886
Brooklyn and Jamaica.....	1832
Brooklyn and Jamaica.....	1866
Brooklyn and Jersey City Ferry.....	1884
Brooklyn and Long Island Cable.....	1884
Brooklyn and Long Island City.....	1880
Brooklyn and Long Island Trunk.....	1883
Brooklyn, Middle Village and Ja- maica.....	1886
Brooklyn, Mpleton, Van Pelt Manor and Bath Beach.....	1893
Brooklyn and Montauk.....	1880
Brooklyn, Newton and Bowery Bay.....	1894
Brooklyn, New York and New Jersey Terminal.....	1893
Brooklyn, Prospect Park and Flat- bush.....	1867
Brooklyn, Prospect Park and Ja- maica Bay.....	1869
Brooklyn and Queens County.....	1883
Brooklyn, Queens County and Sub- urban.....	1893
Brooklyn and Rockaway.....	1867
Brooklyn and Rockaway Beach.....	1864
Brooklyn, Rockaway and Coney Island.....	1881
Brooklyn and Sea Shore.....	1871
Brooklyn Steam Transit.....	1869

Name of road.	When formed.	Name of road.	When formed.
Brooklyn Steam Transit .....	1871	Buffalo, Niagara Falls and Rochester .....	1900
Brooklyn Sub-railway .....	1886	Buffalo, Niagara River and Grand Island .....	1897
Brooklyn and Suburban .....	1887	Buffalo Niagara Slip .....	1877
Brooklyn Union Elevated .....	1899	Buffalo and Niagara Terminal .....	1908
Brooklyn Underground .....	1881	Buffalo, North Main Street and Tonawanda Electric .....	1892
Brooklyn, Winfield and Newtown ..	1870	Buffalo, North Main Street and Tonawanda .....	1895
Brooklyn and Winfield Railway ..	1869	Buffalo, North Tonawanda and Sanborn Electric .....	1898
Broome County .....	1903	Buffalo and Oil Creek Cross Cut ..	1865
Broome and DeLancey Street Cross-town ..	1886	Buffalo and Pittsburg .....	1852
Broome, DeLancey and Spring Streets .....	1895	Buffalo, Pittsburg and St. Louis ..	1852
Bronx Traction Company .....	1904	Buffalo Pittsburg and Western .....	1880
Bronx, Yonkers and White Plains ..	1905	Buffalo, Pittsburg and Western .....	1881
Buffalo .....	1860	Buffalo and Rochester .....	1850
Buffalo .....	1890	Buffalo and Rochester Railway .....	1904
Buffalo and Allegany Valley .....	1853	Buffalo, Rochester and Pittsburg ..	1881
Buffalo, Aurora and Southeastern ..	1882	Buffalo, Rochester and Pittsburg ..	1885
Buffalo and Batavia .....	1838	Buffalo, Rochester and Pittsburg ..	1887
Buffalo, Batavia and Rochester Electric ..	1904	Buffalo and Rochester Traction .....	1905
Buffalo, Bellview and Lancaster ..	1892	Buffalo and South Eastern .....	1904
Buffalo and Black Rock .....	1833	Buffalo and South Park Belt Line ..	1887
Buffalo, Bradford and Pittsburg ..	1859	Buffalo Southern .....	1904
Buffalo Branch of the Erie Railway ..	1861	Buffalo Southern Railway .....	1905
Buffalo, Cayuga Valley and Pine Creek .....	1882	Buffalo and Southwestern .....	1878
Buffalo, Chautauqua Lake and Pittsburg ..	1879	Buffalo and State Line .....	1849
Buffalo City .....	1867	Buffalo and Springville .....	1871
Buffalo City .....	1877	Buffalo, Springville and Cattaraugus ..	1902
Buffalo, Cleveland and Chicago Railway ..	1881	Buffalo Street .....	1860
Buffalo and Cohocton Valley .....	1850	Buffalo and Susquehanna Railway ..	1902
Buffalo, Corning and New York .....	1852	Buffalo, Syracuse and Albany .....	1878
Buffalo, Corey and Pittsburg .....	1868	Buffalo, Tonawanda and Niagara Falls Electric .....	1898
Buffalo Creek .....	1869	Buffalo and Tonawanda Electric .....	1893
Buffalo Creek Extension .....	1874	Buffalo, Thousand Islands and Portland ..	1890
Buffalo Creek Transfer .....	1881	Buffalo, Tonawanda and Niagara Falls ..	1853
Buffalo Crosstown .....	1874	Buffalo, Tonawanda and Niagara River ..	1890
Buffalo and Depew .....	1897	Buffalo Traction .....	1895
Buffalo Dock and Connecting .....	1890	Buffalo Union Terminal .....	1904
Buffalo, Dunkirk and Western .....	1903	Buffalo Valley .....	1898
Buffalo and East Aurora Electric ..	1892	Buffalo and Washington .....	1865
Buffalo, East Otto and Cattaraugus ..	1901	Buffalo and Williamsville .....	1868
Buffalo East Side Street .....	1870	Buffalo and Williamsville .....	1870
Buffalo Electric and Cable Street ..	1889	Buffalo and Williamsville .....	1868
Buffalo and Erie .....	1832	Buffalo and Williamsville Electric ..	1891
Buffalo and Erie .....	1867	Buffalo, Williamsville and Northern ..	1838
Buffalo and Erie Electric .....	1899	Bull's Head and Annandale Beach ..	1902
Buffalo Erie Basin .....	1876	Burnet Street Car .....	1888
Buffalo Frontier Terminal .....	1904	Bush Terminal .....	1908
Buffalo, Gardenville and Ebenezer ..	1895	Rushwick .....	1867
Buffalo and Geneva .....	1886	Cairo .....	1884
Buffalo and Geneva .....	1889	Calvary Cemetery, Greenpoint and Brooklyn ..	1885
Buffalo and Great Western .....	1882	Camden, Watertown and Northern ..	1890
Buffalo and Hamburg .....	1892	Campbell Hall Connecting .....	1889
Buffalo Harbor .....	1883	Canajoharie and Catskill .....	1880
Buffalo, Hamburg and Aurora .....	1897	Canal .....	1878
Buffalo and Hinsdale .....	1840	Canandaigua and Bath .....	1872
Buffalo and International .....	1857	Canandaigua and Corning .....	1845
Buffalo and International Bridge ..	1871	Canandaigua and Elmira .....	1852
Buffalo and Jamestown .....	1872	Canandaigua Lake .....	1887
Buffalo, Kenmore and Tonawanda Electric ..	1891	Canandaigua and Niagara Falls ..	1851
Buffalo, Lackawanna and Pacific ..	1889	Canandaigua, Palmyra and Ontario ..	1872
Buffalo and Lancaster Electric .....	1892	Canandaigua Railway and Transportation Company ..	1828
Buffalo, Lake Erie and Niagara .....	1905	Canandaigua Street .....	1886
Buffalo and Lake Huron .....	1858	Canandaigua and Syracuse .....	1853
Buffalo Lehigh .....	1881	Canarsie, Brooklyn and Winfield ..	1864
Buffalo and Lockport .....	1852	Canarsie and Flatbush .....	1874
Buffalo and Lockport Railway .....	1898	Canastota and Morrisville .....	1901
Buffalo, Lockport and Rochester .....	1905	Canastota and Morrisville .....	1901
Buffalo and New York .....	1851	Canastota Northern .....	1866
Buffalo and New York City .....	1851	Canisteo, Jasper and Woodhull .....	1908
Buffalo, New York and Erie .....	1857		
Buffalo, New York and Philadelphia ..	1871		
Buffalo and Niagara Falls .....	1834		
Buffalo and Niagara Falls Electric ..	1893		
Buffalo and Niagara Falls Electric ..	1895		

Name of road.	When formed.
Canisteo Valley Electric .....	1891
Canton and St. Lawrence River....	1885
Canton and Waddington .....	1884
Capitol Railway .....	1891
Cassadaga and Erie .....	1836
Castleton and West Stockbridge..	1834
Carthage and Adirondack .....	1883
Carthage, Watertown and Sacketts Harbor .....	1869
Catskill City .....	1885
Catskill Electric .....	1897
Catskill Horse .....	1874
Catskill, Cairo and Windham .....	1895
Catskill and Ithaca .....	1828
Catskill Mountain .....	1880
Catskill Mountain .....	1886
Catskill Mountain Traction .....	1901
Catskill and Schoharie Valley .....	1871
Catskill and Tannersville .....	1892
Cattaraugus .....	1868
Cayadutta Electric .....	1882
Cayadutta Electric .....	1893
Cayuga Lake .....	1867
Cayuga Lake Electric .....	1894
Cayuga Lake and Ithaca .....	1904
Cayuga Midland .....	1871
Cayuga Northern .....	1872
Cayuga Railway .....	1875
Cayuga Southern .....	1878
Cayuga and Susquehanna .....	1843
Cazenovia and Canastota .....	1868
Cazenovia and Canastota .....	1873
Cazenovia, Canastota and De Ruyter ..	1873
Cazenovia, Canastota and De Ruyter ..	1876
Cazenovia and De Ruyter .....	1872
Cedarhurst .....	1885
Central City .....	1859
Central Crosstown .....	1873
Central Dock and Terminal .....	1889
Central Elevated Railway .....	1889
Central Elevated Railway .....	1886
Central of Long Island .....	1871
Central New England .....	1889
Central New England and Western ..	1889
Central New York and Northern .....	1899
Central New York and Western .....	1892
Central New York and Western .....	1899
Central Park, North and East River .....	1860
Central Park and Kingsbridge....	1866
Central Railroad Extension .....	1873
Central Saratoga .....	1878
Central of Staten Island .....	1870
Central (Staten Island) .....	1873
Central Tunnel .....	1881
Central Valley .....	1870
Chambers Street .....	1877
Chambers Street .....	1884
Chambers Street Crosstown .....	1880
Chambers Street and Grand Street Ferry .....	1884
Champlain and St. Lawrence .....	1851
Charlotte Lake View .....	1875
Charlotte and Lake View .....	1881
Chateaugay .....	1879
Chateaugay .....	1887
Chautauqua County .....	1851
Chatham and Lebanon Valley .....	1899
Chautauqua Lake .....	1874
Chautauqua Lake .....	1885
Chautauqua Lake .....	1886
Chautauqua Traction .....	1903
Chautauqua Valley .....	1882
Chazy .....	1893
Chemung .....	1845
Chemung and Ithaca .....	1837
Chemung Valley Traction .....	1905
Chenango Valley .....	1863
Cherry Valley and Mohawk River ..	1864
Cherry Valley, Sharon and Albany ..	1869

Name of road.	When formed.
Cherry Valley and Sprakers Horse Power Railroad Company .....	1860
Cherry Valley and Susquehanna....	1836
Chittenango and White Sulphur Springs .....	1895
Christopher Street and James Slip Ferry .....	1885
Christopher and Tenth Street .....	1873
Citizens' Electric .....	1887
Citizens' Electric (Corning) .....	1892
Citizens' Railway .....	1885
Citizens' Railway of Jamestown .....	1890
Citizens' Street (Poughkeepsie) .....	1890
Citizens' Street Railroad Company of Rochester .....	1885
Citizens' Surface .....	1888
City (Binghamton) .....	1883
City Island .....	1884
City Line and Canarsie .....	1869
City of Poughkeepsie .....	1869
City (Poughkeepsie) .....	1878
City Railway Company of New York ..	1888
Clayton and Theresa .....	1871
Clinton Avenue .....	1864
Clinton and South Clinton .....	1853
Glove Branch .....	1868
Clyde Electric .....	1901
Clyde and Sodus Bay .....	1853
Coahuila Coal Company (Mexico) ..	1904
Coeymans .....	1886
Cohoes City .....	1894
Cohoes Railway .....	1904
Cohoes and Waterford .....	1863
Cohoes and Waterford .....	1867
Cohoes and Waterford .....	1872
Cold Springs .....	1839
Colonial City Electric .....	1893
Colonial City Traction .....	1896
Columbia County Electric .....	1895
Columbia and Rensselaer .....	1886
Columbia Street and Erie Basin .....	1866
Columbus and Ninth Avenue .....	1892
Concourse .....	1880
Conesus Lake .....	1882
Coney Island Beach .....	1877
Coney Island and Brooklyn .....	1860
Coney Island Centre and Safety Rails Elevated .....	1880
Coney Island and East River .....	1876
Coney Island Electrical .....	1887
Coney Island Elevated .....	1880
Coney Island, Fort Hamilton and Brooklyn .....	1892
Coney Island, Fort Hamilton and Brooklyn .....	1904
Coney Island, Fort Hamilton and Brooklyn .....	1894
Coney Island and Gravesend .....	1893
Coney Island High and Low Water Mark .....	1877
Coney Island and Rockaway .....	1878
Coney Island and Sea View Ele- vated .....	1880
Coney Island, Sheepshead Bay and Ocean Avenue .....	1880
Coney Island Surface .....	1877
Coney Island Surface .....	1889
Coney Island Transit .....	1880
Connecting Terminal .....	1881
Conquista Coal Railway (Mexico) ..	1900
Cooperstown and Charlotte Valley ..	1888
Cooperstown and Cherry Valley .....	1891
Cooperstown and Cherry Valley .....	1887
Cooperstown and Mohawk Valley .....	1901
Cooperstown and Susquehanna Val- ley .....	1865
Copenhagen and Turin .....	1866
Corning and Blossburgh .....	1851
Corning, Cowanesque and Antrim ..	1873
Corning, Keuka Lake and Ontario ..	1905

Name of road.	When formed.	Name of road.	When formed.
Corning and Olean .....	1853	Eighth Ward (Syracuse) .....	1889
Corning and Painted Post .....	1886	Electric City .....	1904
Corning and Painted Post Street .....	1894	Electric (Auburn) .....	1893
Corning and Seneca Lake .....	1864	Eleventh Ward Street .....	1889
Corning Traction .....	1894	Elizabethtown and Westport .....	1900
Cornwall Branch .....	1869	Ellenville and Kingston .....	1901
Cornwall Suspension Bridge .....	1868	Ellicottville, Mansfield and East Otto .....	1903
Cortland County Traction .....	1901	Elm Street Connecting .....	1900
Cortland and Homer .....	1882	Elmira, Canandaigua and Niagara Falls .....	1857
Cortland and Homer .....	1894	Elmira Connecting .....	1882
Cortland and Homer Traction .....	1894	Elmira Cortland and Northern .....	1884
Corry, Findley Lake and Northeast .....	1905	Elmira and Corning .....	1889
Coudersport, Hornellsville and Lackawanna .....	1889	Elmira and Corning Short Line .....	1904
Court Street and East End .....	1886	Elmira, Corning and Waverly .....	1905
Court Street and River Side .....	1882	Elmira and Horseheads .....	1871
Court Street and River Side .....	1885	Elmira Jefferson and Canandaigua .....	1859
Coxsackie and Greenville Traction .....	1897	Elmira and Lake Ontario .....	1886
Coxsackie and Greenville Traction .....	1899	Elmira and Seneca Lake .....	1896
Coxsackie and Schenectady .....	1837	Elmira and State Line .....	1872
Cranberry Lake .....	1902	Elmira Transfer .....	1885
Crescent (Long Island City) .....	1892	Elmira and Waverly .....	1901
Cross Country .....	1897	Elmira and Williamsport .....	1832
Cross Country (amended certificate) .....	1902	Elmira and Williamsport .....	1860
Crostown Street (Buffalo) .....	1890	Elmwood Avenue and Tonawanda Electric .....	1893
Crostown (Rochester) .....	1889	Empire City Traction .....	1895
Croton Valley .....	1885	Erie .....	1895
Croton Valley Electric .....	1895	Erie and Black Rock .....	1882
Cypress Hill Railway .....	1872	Erie and Cattaraugus .....	1837
Danbury and Harlem Traction .....	1901	Erie and Central New York .....	1883
Dansville Electric .....	1893	Erie and Central New York .....	1902
Dansville and Mount Morris .....	1891	Erie and Genesee Valley .....	1868
Dansville and Rochester .....	1882	Erie International .....	1872
Davenport .....	1888	East Branch Connecting .....	1889
Davenport, Middleburg and Durham .....	1892	East Brooklyn Railroad .....	1874
DeKalb Avenue and North Beach .....	1897	East Brooklyn Railway .....	1873
Delaware .....	1836	East Brooklyn, Winfield and Newtown .....	1867
Delaware .....	1898	East Buffalo Terminal .....	1883
Delaware and Eastern .....	1904	East Chester .....	1886
Delaware and Hudson River .....	1882	Eastern Branch of the Dutchess and Columbia .....	1868
Delaware and North River .....	1889	Eastern Railroad Company of Long Island .....	1879
Delaware and Otsego .....	1887	East Genesee Street and Seward Avenue .....	1871
Delaware Terminal .....	1897	East Genesee Street and Seward Avenue Railway .....	1881
Delaware Valley .....	1888	East New York, Bayside and Ozone Park .....	1885
Delaware Valley and Kingston .....	1899	East New York and Jamaica .....	1860
Delhi and Middletown .....	1871	East New York and Jamaica Bay .....	1865
Deer Park and Babylon .....	1892	East and North River .....	1861
Deerfield and Utica .....	1888	East and North River .....	1884
Depot Belt Line .....	1890	East River and Atlantic Ocean .....	1895
Depew and Southwestern .....	1895	East River Bridge and Coney Island Transit .....	1881
Depew and Tonawanda .....	1895	East River, Central Park and North River .....	1889
Dexter and Brownville Street .....	1895	East River and Connecticut Railway .....	1881
Dexter and Ontario .....	1889	East River Railway .....	1890
Division Avenue .....	1853	East River and Newtown .....	1885
Dry Dock, East Broadway and Battery .....	1863	East River Tunnel .....	1885
Dunderberg Spiral .....	1889	East Side (Elmira) .....	1891
Dunkirk, Allegheny Valley and Pittsburg .....	1872	East Side Traction .....	1899
Dunkirk and Chautauqua Lake .....	1865	East Side and Mt. Vernon Railway .....	1881
Dunkirk, Chautauqua Lake and Pittsburg .....	1873	East Side and New Rochelle Patent Railway .....	1866
Dunkirk and Fredonia .....	1864	East Side Railway .....	1868
Dunkirk and Fredonia Rapid Transit .....	1891	East Side of Rochester .....	1887
Dunkirk and Hickoryhurst .....	1899	East Shore .....	1900
Dunkirk and Junction .....	1879	East and West .....	1890
Dunkirk and Point Gratiot .....	1899	East and West Ferries .....	1887
Dunkirk, Warren and Pittsburg .....	1867	Eastwood and East Syracuse .....	1898
Dunkirk, Warren and Pittsburg .....	1870	Erie and Jersey .....	1905
Dutchess .....	1832	Erie and New England .....	1868
Dutchess .....	1836	Erie and New York City .....	1852
Dutchess and Columbia .....	1868	Erie and Niagara River .....	1882
Dutchess County .....	1890		
Dutchess Extension .....	1889		
Eastern New York .....	1904		
Edenwald Street .....	1895		
Eddyville and Hickory Bush .....	1894		
Eighth Avenue .....	1855		
Eighth and Columbus Avenues Connecting .....	1900		



Name of road.	When formed.
Erie Railway .....	1861
Erie, Rochester and Lake Ontario Terminal .....	1884
Fairport Electric .....	1901
Fallsburgh and Monticello .....	1897
Fallsburgh and Monticello (amended) .....	1897
Far Rockaway Beach .....	1881
Far Rockaway Branch .....	1868
Ferry Crosstown .....	1885
Fifth Avenue .....	1884
Fifth Avenue .....	1885
Fifth Ward .....	1868
Fifty-second, Fifty-third Streets and Boulevard .....	1886
Fiftieth-ninth Street .....	1885
Fiftieth Street, Astoria Ferry and Central Park .....	1890
Findley Lake and State Line .....	1905
First Avenue and Jersey Ferries .....	1864
Fish House and Amsterdam .....	1832
Fishkill .....	1868
Fishkill Electric .....	1895
Fishkill and Matteawan Street .....	1886
Fishkill and Newburgh .....	1876
Fitchburg .....	1842
Fitchburg .....	1887
Fitchburg .....	1892
Flatbush, Coney Island and Canarsie .....	1864
Flatbush, Coney Island Park and Concourse .....	1876
Flushing .....	1852
Flushing .....	1863
Flushing and College Point .....	1866
Flushing and College Point Electric .....	1894
Flushing and College Point Electric Street .....	1887
Flushing and College Point Street .....	1886
Flushing, Newtown and Long Island City .....	1892
Flushing, North Shore and Central .....	1874
Flushing and North Side .....	1868
Flushing and South Shore .....	1898
Flushing Village .....	1871
Flushing and Woodside .....	1864
Fonda and Fultonville .....	1875
Fonda and Fultonville Electric .....	1893
Fonda, Johnstown and Gloversville .....	1867
Fonda, Johnstown and Gloversville .....	1903
Forest Park .....	1902
Forestport .....	1868
Fort Ann and Mount Hope .....	1871
Fort Edward, Glens Falls and Sandy Hill .....	1863
Fort Hamilton and Coney Island .....	1881
Fort Hamilton and New York Elevated .....	1888
Fort George Extension .....	1898
Fort George and Eleventh Avenue .....	1898
Fort George and Eleventh Avenue .....	1898
Fort Plain and Richfield Springs .....	1887
Fort Plain and Richfield Springs .....	1892
Fort Plain Street .....	1887
Fort Pond Bay .....	1883
Forty-second Street Crosstown .....	1877
Forty-second Street and Grand Street Ferry .....	1863
Forty-second Street, Manhattanville and St. Nicholas Avenue .....	1878
Fourteenth Street District Railway .....	1885
Fourth Ward (Syracuse) .....	1888
Frankfort and Ilion .....	1871
Frankfort and Utica Street .....	1895
Franklin Avenue .....	1887
Fredonia and Lilly Dale .....	1899

Name of road.	When formed.
Fredonia and Van Buren .....	1836
Friendship .....	1881
Fulton .....	1864
Fulton Chain .....	1896
Fulton Chain .....	1902
Fulton and Cortlandt Street Ferry .....	1884
Fulton and Cortlandt Street Ferry Railway .....	1884
Fulton Elevated .....	1888
Fulton Ferry and Canarsie Bay .....	1868
Fulton Ferry and Prospect Park .....	1867
Fulton Ferry and Tenth Avenue .....	1865
Fulton and Montgomery County Electric .....	1892
Fulton and Oswego .....	1885
Fulton and Oswego Falls Street .....	1885
Fulton Street .....	1895
Fulton Street Crosstown .....	1887
Fulton, Wall Street and Cortlandt Street Ferries .....	1885
Gallupville .....	1869
Garnerville .....	1875
Geddes Street Railway .....	1886
Genesee Falls .....	1886
Genesee and Hudson .....	1852
Genesee and Orleans .....	1901
Genesee and Orleans (amended certificate) .....	1901
Genesee River .....	1905
Genesee Valley .....	1858
Genesee Valley Canal .....	1880
Genesee Valley Junction .....	1882
Genesee Valley Terminal .....	1882
Genesee and Water Street .....	1865
Genesee and Wyoming Valley Ry .....	1891
Genesee and Wyoming Railroad .....	1899
Genesee .....	1848
Genesee and Pittsford .....	1836
Geneva and Canandaigua .....	1828
Geneva and Cattaraugus .....	1837
Geneva Electric .....	1890
Geneva and Hornellsville .....	1876
Geneva, Hornellsville and Pine Creek .....	1876
Geneva and Ithaca .....	1870
Geneva, Ithaca and Athens .....	1874
Geneva, Ithaca and Sayre .....	1877
Geneva and Lyons .....	1877
Geneva and Sayre .....	1889
Geneva and Southwestern .....	1871
Geneva, Southwestern and Hornellsville .....	1873
Geneva Surface .....	1891
Geneva and Van Ettenville .....	1889
Geneva and Waterloo .....	1893
Geneva, Waterloo, Seneca Falls and Cayuga Lake Traction .....	1895
Gilbert Elevated .....	1872
Gilboa .....	1839
Glen Cove .....	1902
Glendale and East River .....	1874
Glenfield and Western .....	1901
Glens Falls .....	1867
Glens Falls, Sandy Hill and Fort Edward .....	1885
Glens Falls Street .....	1885
Glen Haven .....	1893
Gloversville and Broadalbin .....	1895
Gloversville and Kingsboro .....	1874
Gloversville, Mayfield and Northville .....	1868
Gloversville and Northville .....	1872
Gloversville Street Electric .....	1891
Golden Bridge Electric .....	1901
Golden Bridge Electric (amended certificate) .....	1901
Goshen .....	1898
Goshen and Albany .....	1842
Goshen and Deckertown .....	1867
Goshen and New Jersey .....	1837

Name of road.	When formed.	Name of road.	When formed.
Gouverneur and Adirondack.....	1890	High Bridge Elevated Incline.....	1883
Gouverneur and Edwards.....	1890	Highland Junction.....	1881
Gouverneur and Oswegatchie.....	1892	Highland Trans-Hudson.....	1881
Grand Street.....	1859	Hobart Branch.....	1884
Grand Street Central Translt.....	1884	Honeoye.....	1886
Grand Street Ferry and Middle Vil- lage.....	1869	Hoosick.....	1893
Grand Street and Maspeth.....	1859	Hoosac Tunnel and Saratoga Rail- way.....	1881
Grand Street and Newtown.....	1860	Hornell Street.....	1888
Grand Street, Prospect Park and Flatbush.....	1870	Hornellsville.....	1888
Grand View Beach.....	1889	Hornellsville and Almond Street.....	1873
Gravesend, Flatlands, Flatbush and Brooklyn.....	1890	Hornellsville, Bath and Lake Keuka.....	1905
Great Ausable.....	1828	Hornellsville and Canisteo.....	1892
Great Neck and Port Washington.....	1896	Hornellsville and Cohocton Valley.....	1882
Great Valley and Bradford.....	1881	Hornellsville Electric.....	1891
Greenbush and Nassau Electric.....	1897	Hornellsville and West Union.....	1889
Greene.....	1838	Horseheads and Elmira Avenue.....	1871
Greene.....	1869	Houston and Hoboken.....	1885
Greene County Traction.....	1897	Houston, West Street and Pavonia Ferry.....	1870
Greenpoint and Calvary.....	1865	Hudson Avenue.....	1867
Greenpoint and Lorimer Street.....	1884	Hudson and Berkshire.....	1828
Greenpoint, Prospect Park and Greenwood.....	1866	Hudson and Boston.....	1855
Greenpoint and Williamsburg.....	1864	Hudson Connecting.....	1887
Greenwich and Johnsonville.....	1869	Hudson and Delaware.....	1830
Greenwich and Johnsonville.....	1874	Hudson Electric.....	1888
Greenwich and Johnsonville.....	1903	Hudson, Highland Bridge and Railway.....	1896
Greenwich and Johnsonville Rail- way.....	1879	Hudson and Kinderhook.....	1871
Greenwich and Schuylerville Elec- tric.....	1895	Hudson Light and Power.....	1899
Greenwood and Coney Island.....	1872	Hudson and Manhattan (under- ground).....	1903
Greenwood Lake and Port Jervis.....	1888	Hudson and Mohawk.....	1869
Greilsville and Pearl Creek.....	1897	Hudson River.....	1846
Hamburg.....	1895	Hudson River and Berkshire.....	1897
Hamilton Avenue and Prospect Park.....	1869	Hudson River and Boston.....	1885
Hamilton Avenue, Prospect Park and Flatbush.....	1868	Hudson River and Cornell.....	1895
Hamilton Ferry and Canarsie.....	1870	Hudson River and Long Island Sound.....	1897
Hancock and Pennsylvania.....	1889	Hudson River and Washington County Midland.....	1895
Hancock and State Line.....	1889	Hudson River West Shore.....	1867
Harlem Bridge, Morrisania and Fordham.....	1863	Hudson and St. Lawrence.....	1872
Harlem, Brook Avenue and Wood- stock.....	1890	Hudson, Suspension Bridge and New England.....	1870
Harlem Crosstown.....	1885	Hudson Tunnel.....	1873
Harlem Extension.....	1870	Hudson Tunnel.....	1880
Harlem and Kings Bridge.....	1892	Hudson Tunnel of New York.....	1880
Harlem, Mott Haven and Morris Avenue.....	1890	Hudson Tunnel Railway.....	1880
Harlem River.....	1883	Hudson Valley.....	1870
Harlem River and High Bridge.....	1853	Hudson Valley.....	1901
Harlem River and Port Chester.....	1866	Hudson and West Shore.....	1860
Harlem River and Port Chester Rapid Transit.....	1880	Huguenot Electric.....	1898
Harlem River and Woodstock.....	1886	Hunter's Point Avenue and Cal- vary Cemetery.....	1888
Harlem River and Tarrytown.....	1864	Hunter's Point and Flushing.....	1872
Harlem and Riverdale Park.....	1885	Hunter's Point, Ravenswood and Astoria.....	1864
Hartford and Connecticut Western.....	1881	Hunter's Point and Rockaway Beach.....	1867
Hayt's Corners, Ovid and Willard.....	1882	Hunter's Point and South Side.....	1870
Hempstead Traction.....	1894	Huntington Street.....	1887
Hempstead and Jamaica.....	1865	Huntington Street.....	1890
Hempstead and Smithtown.....	1873	Ilion Street.....	1875
Hempstead and Rockaway.....	1870	Interborough Rapid Transit (un- derground).....	1902
Henning Rapid Transit.....	1891	International.....	1861
Herkimer and Mohawk.....	1871	International.....	1902
Herkimer, Mohawk, Ilion and Frankfort Electric.....	1895	International and Oak Orchard Harbor.....	1894
Herkimer, Newport and Poland Narrow Gauge.....	1880	Interstate Tunnel Railway Company of New York.....	1905
Herkimer, Newport and Poland Extension.....	1891	Intervale Traction.....	1902
Herkimer and Trenton.....	1836	Interurban Street.....	1902
Hicksville and Cold Springs Branch.....	1853	Iron Hill.....	1873
Hicksville and Huntington.....	1865	Irondequoit Park.....	1895
High Bridge.....	1866	Irondequoit Park.....	1895
		Irondequoit and Lake Shore Elec- tric.....	1895
		Island.....	1888

Name of road.	When formed.
Ithaca	1884
Ithaca and Athens	1870
Ithaca and Auburn	1836
Ithaca and Auburn Electric	1903
Ithaca, Auburn and Western	1876
Ithaca and Cayuga Heights	1904
Ithaca and Cortland	1869
Ithaca-Cortland Traction	1903
Ithaca and Geneva	1832
Ithaca and Oswego	1828
Ithaca and Port Renwick	1834
Ithaca and Tonawanda	1866
Interstate Traction Company	1892
Jackson and Steinway Avenue Railroad Company of Long Island	1879
Jamaica and Brooklyn Road	1880
Jamaica and Middle Village	1866
Jamaica and South Shore	1903
Jamaica, Woodhaven and Brooklyn	1872
Jamestown	1871
Jamestown	1883
Jamestown and Chautauqua	1898
Jamestown, Chautauqua and Lake Erie	1900
Jamestown and Lake Erie	1894
Jamestown Manufacturers' Terminal	1900
Jamestown and Northern	1885
Jamestown Short-Line Railway	1886
Jamestown Street	1882
Jamestown Terminal	1898
Janesville	1836
Jasper, Troupsburg and Knox-ville	1897
Jerome Avenue	1889
Jerome Park	1880
Jerome Park Beach	1876
Jersey City and Albany	1873
Jersey City and Albany Railway	1879
Jersey City and Albany Railroad Company of the States of New York and New Jersey	1879
Jersey Ferries and First Avenue	1865
Johnsonville and Rutland	1890
Johnstown	1836
Johnstown, Gloversville and Kings-boro	1873
Jordan and Skaneateles	1837
Junction	1870
Junction Railway	1865
Kanona and Prattsburgh	1886
Kanona and Prattsburgh	1897
Kaaterskill	1882
Kaaterskill and Plattekill	1892
Keeseville, Ausable Chasm and Lake Champlain	1889
Keeseville and Montreal	1869
Kinderhook and Hudson	1889
Kinderhook and Hudson	1896
Kinderhook, Valatie and Niver-ville	1887
Kinderhook, Valatie and Stuyve-sant	1887
Kingsbridge	1898
Kings Bridge Cable Railway	1886
Kings Bridge, High Bridge and Forty-second Street	1864
Kings Bridge and Yonkers	1876
Kings County	1878
Kings County Central	1876
Kings County Elevated	1879
Kings County Elevated	1899
Kings County Electric	1892
Kings, Queens and Suffolk	1895
Kingston City	1879
Kingston City Electric	1892
Kingston Consolidated	1901
Kingston and Lake Katrine	1896
Kingston and Rondout	1866

Name of road.	When formed.
Kingston and Rondout Valley	1897
Kingston Turnpike and Railroad Company	1836
Kingston and Utica	1892
Kingston, Warwick and Easton	1888
Kilpknockie	1899
Lackawanna, Catskill Mountain and Boston	1893
Lackawanna and Pittsburg	1888
Lackawanna and Southwestern	1889
Lackawanna and Susquehanna	1867
Lackawanna Tunnel	1904
Lake Champlain and Moriah	1867
Lake Champlain and Ogdensburg	1832
Lake Erie Traction	1902
Lake Erie Traction	1902
Lake Keuka and East Side	1903
Lake Keuka and East Side (amended)	1903
Lake Mahopac and Connecticut	1886
Lake Ontario	1874
Lake Ontario and Auburn	1856
Lake Ontario, Auburn and New York	1852
Lake Ontario and Hudson River	1857
Lake Ontario and Riverside	1896
Lake Ontario Shore	1868
Lake Ontario Southern	1880
Lake and River Improvement and Railroad Land Company of the New York Wilderness	1865
Lake Shore and Michigan South-ern	1869
Lake Shore Traction Company	1902
Lansingburgh and Cohoes	1880
Lansingburgh and Troy	1853
Lansingburgh and Troy	1872
Larchmont Horse	1888
Laurel Hill, New Calvary and Lutheran Cemetery	1885
Lawrenceville and Erie	1874
Lebanon Springs	1852
Lebanon Springs	1893
Lehigh and Hudson River	1882
Lehigh and Lake Erie	1896
Lehigh and New York	1895
Lehigh Valley	1882
Lehigh Valley	1882
Lehigh Valley	1890
Lehigh and Pavilion	1883
Le Roy and Northern	1895
Lewiston	1836
Lewiston and Youngstown	1892
Lewiston and Youngstown Fron-tier	1895
Lexington Avenue and Fourteenth Street	1884
Lexington Avenue and South Ferry	1886
Lexington Avenue	1892
Lexington Avenue and Pavonia Ferry	1892
Liberty and Jeffersonville Elec-tric	1897
Lincoln Park and Charlotte	1888
Lima-Honeoye Electric Light	1898
Lima-Honeoye Electric Light and Railroad Company	1898
Lima and Honeoye Falls	1892
Lima Railway	1897
Little Falls and Dolgeville	1891
Little Falls and Dolgeville	1903
Little Falls, Dolgeville and Plasco Lake	1883
Little Falls and Herkimer Street	1895
Little Falls and Richfield Springs	1895
Little Falls Street	1895
Little Falls, Van Hornesville and Otsego Lake Narrow Gauge	1889
Liverpool and Syracuse	1868

Name of road.	When formed.	Name of road.	When formed.
Livonia and Lake Conesus.....	1895	Massena Springs and Fort Covington	1884
Lock City Electric.....	1892	Massena Terminal.....	1900
Lockport Street.....	1885	Matamoras and New York.....	1898
Lockport and Batavia.....	1836	Mayville Extension.....	1881
Lockport and Buffalo.....	1871	Mayville and Portland.....	1832
Lockport and Niagara Falls.....	1834	Mechanicville and Fort Edward.....	1880
Lockport and Northern.....	1889	Medina and Darlen.....	1884
Lockport and Olcott.....	1900	Medina and Lake Ontario.....	1836
Lockport and Olcott Beach.....	1891	Melrose and West Morrisania.....	1886
Lockport and Youngstown.....	1836	Metropolitan Crosstown.....	1889
Lockport City and Olcott Electric..	1894	Metropolitan Elevated.....	1872
Locust Grove and Brighton Beach..	1879	Metropolitan Elevated.....	1878
London, Aylmer and North Shore Electric.....	1902	Metropolitan Railroad.....	1864
Long Beach Marine.....	1881	Metropolitan Railway.....	1864
Long Island.....	1834	Metropolitan Street.....	1893
Long Island Boynton Bicycle.....	1891	Metropolitan Street.....	1894
Long Island City Calvary Cemetery.	1871	Metropolitan Street.....	1895
Long Island City and Flushing.....	1881	Metropolitan Surface.....	1885
Long Island City and Manhattan Beach.....	1883	Metropolitan Surface.....	1886
Long Island City and Maspeth.....	1873	Metropolitan Transit.....	1867
Long Island City and Newtown.....	1883	Metropolitan Transit.....	1872
Long Island City and Sea Beach.....	1886	Metropolitan Tunnel.....	1899
Long Island City Shore.....	1874	Metropolitan Underground.....	1891
Long Island Elevated Railway.....	1886	Mexican Mineral Railway Com- pany (Foreign).....	1899
Long Island Electric.....	1894	Midland New York.....	1902
Long Island Electric.....	1903	Middleburgh and Oak Hill Trac- tion.....	1897
Long Island Extension.....	1901	Middleburgh and Schoharie.....	1867
Long Island New York Terminal.....	1892	Middle Central.....	1878
Long Island, North Shore Branch..	1892	Middletown and Crawford.....	1868
Long Island Railroad Terminal.....	1899	Middletown-Broomingburgh Elec- tric.....	1895
Long Lake.....	1895	Middletown-Goshen Traction.....	1893
Lowville and Beaver River.....	1903	Middletown-Goshen Traction.....	1895
Lyons Electric.....	1901	Middletown-Goshen Electric.....	1899
Lyons and Sodus Bay.....	1901	Middletown Horse.....	1870
Lyons Street Surface.....	1889	Middletown Street.....	1889
Macedon Electric.....	1901	Middletown Street Railroad and Power.....	1893
Madison Avenue and Eighty-sixth Street.....	1885	Middletown, Unionville and Water Gap.....	1866
Madison Avenue and Twenty-third Street.....	1885	Middle Village.....	1867
Madison Avenue Underground.....	1880	Middlesex Valley.....	1892
Madison County.....	1829	Midwout, Amersfort and Coney Island.....	1877
Mahopac Falls.....	1884	Millford, Matamoras and New York.....	1897
Main and Ohio Street.....	1859	Mineola, Hempstead and Freeport..	1899
Malden.....	1837	Mineola, Roslyn and Port Wash- ington Traction.....	1902
Malden.....	1863	Mohawk and Adirondack.....	1891
Malone and Canada.....	1883	Mohawk and Hudson.....	1828
Malone and St. Lawrence.....	1891	Mohawk and Ilion.....	1870
Malone and Schenectady.....	1892	Mohawk Interurban Traction.....	1901
Manaos (Foreign).....	1898	Mohawk and Lake Erie Railway.....	1881
Manhattan Beach Extension.....	1883	Mohawk and Malone.....	1892
Manhattan Beach and West Brighton.....	1879	Mohawk and Moose River.....	1857
Manhattan Elevated.....	1875	Mohawk and Northern.....	1891
Manhattan and Jersey City.....	1899	Mohawk River Traction.....	1901
Manhattan and Jersey City (amended).....	1899	Mohawk and St. Lawrence Railroad Navigation Company.....	1837
Manhattan and Long Island (Tun- nel).....	1905	Mohawk and St. Lawrence.....	1890
Manhattan Railroad.....	1879	Mohawk and Susquehanna Valley.....	1887
Manhattan Railway.....	1867	Mohawk Valley.....	1851
Manhattan Railway.....	1884	Mohawk Valley and Piseco.....	1863
Manhattan Surface.....	1887	Mohawk Valley and Northern.....	1890
Manhattan Tunnel.....	1899	Mohawk Valley Traction.....	1901
Mann's Boudoir Car.....	1883	Monroe and Greenwood Lake.....	1877
Manheim and Salisbury.....	1834	Montague Street Railway.....	1885
Maple Avenue.....	1887	Montgomery and Erie.....	1866
Marcellus Electric.....	1897	Montgomery and Erie.....	1886
Marcellus and Otisco Lake.....	1905	Monticello, Fallsburgh and New York.....	1888
Marginal.....	1877	Monticello, Fallsburgh and White Lake.....	1900
Marine.....	1878	Monticello and Port Jervis.....	1868
Maspeth Railroad and Bridge Company.....	1868	Montreal and Plattsburgh.....	1868
Massena Electric.....	1899	Montauk Extension.....	1893
Massena and Norwood.....	1901		
Massena and Raymondville Elec- tric.....	1902		

Name of road.	When formed.	Name of road.	When formed.
Morris Avenue .....	1885	New York, Bay Ridge and Jamaica.	1876
Monroe County Electric Belt Line..	1901	New York Beach .....	1897
Mountain Lake Electric.....	1896	New York and Boston .....	1869
Mount McGregor .....	1882	New York and Boston .....	1892
Mount McGregor .....	1889	New York, Boston and Albany....	1880
Mount Prospect and Carroll Street.	1873	New York, Boston, Albany and	
Mount Vernon and East Chester..	1885	Schenectady .....	1880
Mount Vernon and East Chester..	1887	New York and Boston Extension...	1872
Mount Vernon and New York.....	1892	New York, Boston and Montreal...	1873
Mount Vernon and Yonkers .....	1885	New York and Boston Inland.....	1882
Municipal Street .....	1899	New York, Boston and Northern...	1873
Myrtle Avenue Branch.....	1881	New York and Brighton Beach....	1879
Nanuet and New City .....	1871	New York and Brooklyn .....	1891
Nassau .....	1865	New York and Brooklyn Elevated.	1880
Nassau Belt Line Traction.....	1899	New York, Brooklyn and Jersey	
Nassau Cable .....	1884	City Rapid Transit.....	1900
Nassau County .....	1899	New York and Brooklyn Marine...	1880
Nassau Electric (Brooklyn).....	1893	New York, Brooklyn and Manhattan	
Neverstink Valley .....	1889	Beach .....	1885
Newark .....	1836	New York, Brooklyn and Rock-	
Newark Electric .....	1901	away .....	1881
Newark and Marlon .....	1900	New York, Brooklyn and Sea	
New Brighton and Onondaga Val-		Beach .....	1878
ley .....	1869	New York, Brooklyn and Sea	
Newburgh, Dutchess and Con-		Shore .....	1877
necticut .....	1877	New York and Brooklyn Tunnel...	1895
Newburgh .....	1868	New York and Brooklyn Tunnel...	1896
Newburgh .....	1882	New York and Brooklyn Union	
Newburgh .....	1886	Transportation .....	1900
Newburgh Electric .....	1894	New York and Brighton Beach....	1878
Newburgh Electric .....	1897	New York Cable .....	1884
Newburgh and Kingeton .....	1869	New York Canada .....	1872
Newburgh and Middletown .....	1866	New York Canadian Pacific.....	1891
Newburgh and Midland .....	1870	New York Canadian Pacific.....	1905
Newburgh and Orange Lake .....	1894	New York Central .....	1853
Newburgh, New Windsor and		New York Central and Hudson	
Bainville .....	1893	River .....	1869
Newburgh and New York Railroad..	1864	New York Central, Hudson River	
Newburgh and New York Railroad..	1865	and Port Orange .....	1884
Newburgh and Poughkeepsie.....	1887	New York Central Niagara River.	1877
Newburgh and Wallkill Valley .....	1868	New York, Chicago and St. Louis..	1881
New England .....	1895	New York, Chicago and St. Louis..	1887
New England, Lackawanna and		New York City .....	1884
Pittsburg .....	1883	New York City .....	1904
New England, New York and		New York City Crosstown .....	1863
Pennsylvania .....	1873	New York City Interborough .....	1902
New England and Southwestern ..	1885	New York City and Northern .....	1878
New England and Western .....	1887	New York City Rapid Transit....	1872
New Hamburg and Poughkeepsie		New York City Suburban Surface.	1889
Connecting .....	1893	New York City Underground .....	1868
New Jersey and Hudson River....	1881	New York City and Westchester...	1887
New Jersey and New England....	1873	New York and Coney Island.....	1879
New Jersey and New York .....	1875	New York, Coney Island and	
New Jersey and New York Exten-		Rockaway .....	1879
sion .....	1886	New York and Connecticut.....	1846
New Jersey and Staten Island		New York, Connecticut and East-	
Junction .....	1886	ern of New York .....	1880
New Paltz and Highland Electric..	1893	New York Connecting .....	1892
New Paltz, Highland and Pough-		New York and Croton River.....	1871
keepsie Traction .....	1903	New York and Croton River Ex-	
New Paltz and Poughkeepsie		tension .....	1872
Traction .....	1900	New York, Danbury and Boston...	1888
New Paltz and Wallkill Valley....	1897	New York District Railway.....	1885
New Rochelle Electric .....	1897	New York and East River.....	1882
New Rochelle and Pelham .....	1885	New York Elevated .....	1871
New Rochelle Railway and Transit		New York and Erie .....	1832
Company .....	1890	New York, Elmsford and White	
New Rochelle Street Horse Rail-		Plains .....	1892
road .....	1885	New York and Flushing.....	1859
New Rochelle Street Railway.....	1885	New York, Fordham and Bronx...	1885
Newtown .....	1894	New York, Fort Hamilton and	
Newtown Creek Terminal.....	1896	Coney Island .....	1880
Newtown and Flushing.....	1871	New York, Greenwood and Coney	
New Williamsburg and Flatbush..	1873	Island .....	1879
New York .....	1860	New York Harbor .....	1887
New York and Albany .....	1832	New York and Harlem .....	1831
New York and Albany .....	1867	New York and Hempstead .....	1871
New York and Atlantic .....	1880	New York and Hempstead Plains...	1870
New York and Atlantic Coast.....	1880	New York and Highland Suspension	
New York, Auburn and Lansing....	1900	Bridge Company .....	1869
New York Bay Extension.....	1892	New York, Housatonic and Northern	1864

Name of road.	When formed.	Name of road.	When formed.
New York and Jamaica.....	1859	New York and South Beach.....	1891
New York and Jersey.....	1902	New York and South Side.....	1874
New York and Jersey.....	1905	New York and South Mount Ver- non .....	1892
New York and New Jersey (amended certificate) .....	1902	New York and Stamford .....	1901
New York and Jersey City Terminal Underground .....	1902	New York State.....	1873
New York and Jersey City.....	1891	New York Suburban Railway.....	1886
New York, Kingston and Syracuse..	1872	New York Surface Railway .....	1886
New York, Lackawanna and Western	1880	New York and Troy.....	1852
New York and Lake Mahopac.....	1861	New York Tunnel .....	1880
New York, Lake Erie and Western	1878	New York Underground.....	1880
New York and Long Beach.....	1880	New York Underground Exten- sion .....	1874
New York and Long Island.....	1887	New York, Utica and Ogdensburg.	1870
New York and Long Island.....	1899	New York, Westchester and Bos- ton .....	1872
New York, Long Island and Rockaway .....	1879	New York, Westchester and Con- necticut Traction .....	1895
New York and Long Island Sub- urban .....	1891	New York and Westchester County .....	1859
New York and Mahopac.....	1871	New York, Westchester and Put- nam .....	1877
New York and Manhattan Beach...	1877	New York, Westchester and Put- nam .....	1887
New York, Mapleton and Van Pelt Manor .....	1892	New York and Western .....	1853
New York and Massachusetts.....	1887	New York Western Midland.....	1872
New York and Mohawk Valley.....	1902	New York, West Shore and Buf- falo .....	1880
New York and Newburgh.....	1854	New York, West Shore and Buf- falo Railway.....	1881
New York and New England.....	1873	New York, West Shore and Chi- cago .....	1870
New York, New England and Northern .....	1893	New York, White Plains and Mamaroneck .....	1892
New York, New Haven and Hart- ford .....	*1871	New York and White Plains.....	1871
New York and New Jersey.....	1878	New York, Woodhaven and Rock- away .....	1877
New York and New Jersey Railway.	1891	New York and Yonkers.....	1859
New York and New Jersey Terminal	1881	New York and Yonkers.....	1892
New York and New Jersey Tunnel..	1883	Niagara Bridge and Canandaigua..	1853
New York, New Jersey and Eastern	1892	Niagara Electric .....	1898
New York and New Rochelle.....	1852	Niagara Falls .....	1871
New York Northern.....	1883	Niagara Falls Branch.....	1875
New York and Northern.....	1866	Niagara Falls, Buffalo and New York .....	1852
New York and Northern.....	1880	Niagara Falls and Lake Ontario..	1852
New York and Northern.....	1887	Niagara Falls and Lake Ontario..	1852
New York Northern Central.....	1865	Niagara Falls and La Salle.....	1890
New York and North Salem.....	1871	Niagara Falls and Lewiston.....	1849
New York and North Shore.....	1897	Niagara Falls and Lewiston.....	1890
New York, Ontario and Western.....	1880	Niagara Falls and Lockport Elec- tric .....	1905
New York and Oswego Midland.....	1836	Niagara Falls Street .....	1895
New York and Ottawa.....	1897	Niagara Falls and Suspension Bridge .....	1882
New York and Ottawa.....	1905	Niagara Falls and Whirlpool Rail- way .....	1886
New York and Pallsade.....	1845	Niagara Falls, Whirlpool and Northern .....	1894
New York and Pennsylvania.....	1895	Niagara Gorge .....	1899
New York and Pennsylvania.....	1896	Niagara Junction .....	1892
New York and Pennsylvania.....	1904	Niagara River .....	1852
New York, Pennsylvania and Ohio..	1880	Niagara River Street.....	1890
New York, Pennsylvania and Western .....	1881	Niagara River and Erie.....	1889
New York and Putnam.....	1894	Niagara River and New York Air Line .....	1872
New York and Port Chester.....	1901	Niagara Shore Terminal.....	1891
New York and Port Chester (amended certificate) .....	1901	Niagara Street .....	1859
New York and Queens County Tunnel .....	1891	Niagara Transfer.....	1902
New York and Queens County.....	1896	Niagara Transfer .....	1904
New York and Queens County.....	1896	Nichols and Northern Pennsylvania.	1903
New York and Queens County.....	1902	Ninth Avenue .....	1859
New York Quick Transit.....	1874	Ninth Street, Brooklyn Ferry and Suburban .....	1898
New York Railway.....	1871	North End Street.....	1895
New York, Richfield Springs and Cooperstown .....	1882	North and East Greenbush.....	1878
New York and Rockaway.....	1871	North and East Greenbush .....	1882
New York and Rockaway Beach.....	1876	North and East River.....	1886
New York and Rockaway Beach.....	1887	North and New York City, Trac- tion .....	1895
New York, Rockaway and Long Island .....	1880		
New York, Rutland and Montreal..	1883		
New York and Sea Beach.....	1876		
New York and Sea Beach Rail- way .....	1883		
New York, Sea Beach and Coney Island .....	1878		

\*See also Laws of 1846.

# DATES WHEN COMPANIES FORMED.

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Name of road.	When formed.
North and South Electric.....	1894
Northern .....	1845
Northern Adirondack.....	1883
Northern Adirondack.....	1890
Northern Adirondack Extension.....	1886
Northern Air Line.....	1869
Northern Central New York.....	1867
Northern Extension of Rochester, Nunda and Pittsburg.....	1872
Northern of New Jersey.....	1854
Northern New York .....	1870
Northern New York .....	1895
North New York Junction.....	1891
Northern Railroad Company of Long Island.....	1881
Northern Shawmut.....	1903
Northern Slackwater and Railroad Company .....	1846
North Mount Vernon.....	1892
North New York.....	1885
North Park.....	1872
Northport Traction .....	1901
North River.....	1880
North River.....	1881
North River.....	1902
North River and Wall Street Ferry.....	1862
North Side of Long Island.....	1867
North Second Street and Middle Village .....	1871
North Side Railroad Company of Rochester .....	1887
North Side (Staten Island).....	1871
North Shore .....	1863
North Shore of Long Island.....	1870
North Shore and Port Washington.....	1874
North Third Avenue and Fleetwood Park .....	1890
Norwood and Montreal .....	1884
Norwood and St. Lawrence.....	1901
Norstrand Avenue and Park.....	1870
Nyack and Northern.....	1868
Nyack and Southern.....	1899
Nyack Traction.....	1895
Nypano .....	1896
Oak Hill Iron.....	1880
Oak Hill Traction.....	1897
Oatka Valley.....	1883
Ocean Bay and Sheepshead Bay Railway .....	1881
Ocean Electric.....	1897
Ocean Palace Elevated.....	1877
Ocean Parkway Transit.....	1888
Ogdensburg .....	1853
Ogdensburg .....	1835
Ogdensburg, Clayton and Rome.....	1853
Ogdensburg and Lake Champlain.....	1864
Ogdensburg and Lake Champlain Railway .....	1898
Ogdensburg and Morristown.....	1871
Ogdensburg and Morristown.....	1877
Ogdensburg Street Railway.....	1885
Old Forge .....	1894
Olean .....	1880
Olean, Bradford and Warren.....	1877
Olean, Rock City and Bradford.....	1897
Olean Street .....	1880
Olean Terminal.....	1897
Olean and Salamanca.....	1882
One Hundred and Fifty-fifth Street.....	1886
One Hundred and Sixteenth Street and Fort Lee Ferry.....	1885
One Hundred and Twenty-fifth Street .....	1871
Oneida .....	1885
Oneida Horse .....	1874
Oneida, Oneonta and New York.....	1889
Oneida Railway .....	1903
Oneida Street .....	1887
Oneida Traction .....	1901
Oneida Valley .....	1864

Name of road.	When formed.
Oneonta, Cooperstown and Richfield Springs .....	1901
Oneonta Street .....	1887
Oneonta and Earlville.....	1872
Oneonta and Earlville.....	1889
Oneonta and Otsego Valley.....	1887
Oneonta and Otsego Valley.....	1897
Oneonta and Richfield Springs.....	1889
Onondaga Lake.....	1890
Onondaga Lake.....	1896
Ontario, Carbondale and Scranton.....	1889
Ontario Southern .....	1876
Ontario and Wayne Traction.....	1901
Orange County.....	1877
Orange County .....	1888
Orange County Traction.....	1901
Oscawana and Cornell.....	1892
Ossining .....	1888
Ossining Electric .....	1893
Ossining Electric .....	1898
Ossining Street.....	1892
Oswayo Valley.....	1900
Oswego .....	1885
Oswego, Binghamton and New York.....	1855
Oswego City (Street).....	1870
Oswego City and Town.....	1872
Oswego and Cortland.....	1886
Oswego Northern and Eastern.....	1853
Oswego Traction .....	1899
Oswego and Rome.....	1863
Oswego and Syracuse.....	1839
Oswego and Syracuse.....	1892
Oswego and Troy.....	1854
Oswego and Utica.....	1836
Otis Elevating Railway.....	1885
Otis Railway .....	1899
Otsego .....	1832
Ottawa, St. Lawrence and Schenec- tady .....	1885
Ottawa, Waddington and New York Railway and Bridge Company of New York.....	1884
Owasco River Railway.....	1881
Oyster Bay Extension.....	1886
Palmyra Electric .....	1901
Park Avenue .....	1870
Park Avenue .....	1882
Patchogue and Port Jefferson Trac- tion .....	1896
Peckapoort Connecting.....	1896
Peekskill .....	1898
Peekskill and Cortlandt Electric.....	1894
Peekskill State Camp and Mohogan.....	1894
Peekskill Traction .....	1898
Peekskill Valley.....	1887
Pelham Park .....	1884
Pelham and Port Chester.....	1872
Pelham and Travers Island.....	1879
Penfield and Canal.....	1837
Pennsylvania and Erie Coal and Railway Company .....	1875
Pennsylvania New York Extension (underground) .....	1902
Pennsylvania, New York and Long Island (underground) .....	1902
Pennsylvania, Poughkeepsie and Boston .....	1887
Pennsylvania, Slatington and New England .....	1882
Pennsylvania and Sodus Bay.....	1870
Penn Yan and Geneva.....	1875
Penn Yan, Keuka Park and Branch- port .....	1897
Penn Yan and Lake Keuka Electric.....	1902
Penn Yan, Lake Keuka and Southern .....	1899
Penn Yan and New York.....	1877
Penn Yan and Pennsylvania.....	1897
People's .....	1880
People's (Brooklyn).....	1898

Name of road.	When formed.	Name of road.	When formed.
People's Electric Street.....	1888	Poughkeepsie and Millbrook.....	1892
People's Rapid Transit.....	1888	Poughkeepsie and New Hamburg.....	1893
People's Surface of Niagara Falls		Prince's Bay.....	1897
and Suspension Bridge.....	1891	Prospect Park and Clarkson Street.....	1878
People's Surface Railway.....	1885	Prospect Park and Coney Island.....	1867
People's (Syracuse).....	1887	Prospect Park and Coney Island.....	1874
People's Traction of City of New		Prospect Park and Flatbush.....	1875
York.....	1895	Prospect Park and Sea Side.....	1879
Perry.....	1882	Prospect Park and South Brooklyn.....	1888
Perry, Castile, Silver Springs and		Putnam and Dutchess.....	1871
Pike.....	1899	Queens Borough and Nassau	
Perry, Livingston and Wyoming...	1896	County.....	1900
Perth Amboy.....	1885	Queens City Street.....	1887
Philadelphia, Honesdale and Albany	1893	Queens County.....	1871
Philadelphia, Honesdale and Albany	1893	Queens Railway.....	1872
Philadelphia, Reading and New		Queens Railway.....	1902
England.....	1892	Racket River.....	1893
Piermont and Nyack.....	1864	Raquette Lake.....	1899
Piermont and West Shore.....	1857	Raquette River.....	1895
Pine Plains and Albany.....	1872	Rapid Transit (Troy).....	1890
Pine Plains and Rhinebeck.....	1873	Rapid Transit Underground.....	1897
Pittsburg, Chautauqua and Lake		Rensselaerville and Berne.....	1869
Erie.....	1888	Rensselaer and Saratoga.....	1832
Pittsburg, Binghamton and Eastern.	1904	Rhinebeck and Connecticut.....	1870
Pittsburg, Lackawanna and North-		Rhinebeck and Rhinecliff.....	1893
eastern.....	1883	Rhinebeck and Rhinecliff Street...	1904
Pittsburg, Titusville and Buffalo...	1880	Richfield Springs and Cherry Valley	1882
Pittsburg and Rouse's Point.....	1851	Richfield Springs and Otsego Lake...	1866
Pittsburg, Shawmut and Northern.	1899	Richfield Springs and Schuyler Lake	1895
Plattsburgh and Montreal.....	1850	Richmond Beach.....	1901
Plattsburgh Traction.....	1896	Richmond County.....	1885
Pochuck.....	1897	Richmond Light and Railroad Com-	
Portage and Cuba Low Grade.....	1882	pany.....	1902
Port Byron and Auburn.....	1829	Richmond Street.....	1902
Port Chester Electric.....	1895	Ridge Road and Lake Shore.....	1899
Port Chester and Rye Beach Street.	1887	Riker Avenue and Sanford's Point.	1886
Port Chester, Rye and Mamaroneck		River Bridge.....	1891
Electric.....	1894	Riverhead, Quogue and Southampton	1897
Port Chester, Rye and White Plains		Riverhead, Quogue and Southamp-	
Electric.....	1895	ton (amended).....	1897
Port Chester Street.....	1896	River and Valley Traction.....	1894
Port Chester Terminal.....	1901	Rochester.....	1833
Port Chester and Tarrytown.....	1882	Rochester.....	1890
Port Chester, White Plains and		Rochester Cable.....	1887
Tarrytown Street.....	1888	Rochester and Canal.....	1831
Port Dickinson and Chenango		Rochester and Charlotte.....	1836
River.....	1881	Rochester and Charlotte.....	1881
Port Jervis Electric.....	1889	Rochester and Charlotte Boulevard.	1873
Port Jervis Electric Light, Power,		Rochester, Charlotte and Manitou...	1895
Gas and Railroad.....	1902	Rochester City and Brighton.....	1862
Port Jervis Electric Street.....	1895	Rochester City and Brighton Ter-	
Port Jervis and Monticello.....	1875	rminal.....	1887
Port Jervis, Monticello and New		Rochester and Eastern Rapid.....	1901
York.....	1886	Rochester and Eastern Rapid	
Port Jervis, Monticello and Sum-		(amended).....	1903
mitville.....	1903	Rochester Electric.....	1887
Port Jervis and Suburban.....	1889	Rochester and Genesee Valley....	1851
Port Morris and Westchester.....	1861	Rochester and Genesee Valley	
Port Richmond and Prohibition		Canal.....	1879
Park Electric.....	1891	Rochester and Glen Haven.....	1887
Potosi and Rio Verde (Foreign)...	1898	Rochester and Honeyoy Valley....	1888
Potsdam and Montreal.....	1881	Rochester, Hornellsville and Lacka-	
Potsdam and Watertown.....	1852	wanna.....	1886
Poughkeepsie Bridge.....	1888	Rochester, Hornellsville and Pine	
Poughkeepsie Bridge and Railroad.	1892	Creek.....	1872
Poughkeepsie City.....	1866	Rochester and Irondequoit.....	1893
Poughkeepsie and Connecticut.....	1888	Rochester and Irondequoit.....	1893
Poughkeepsie Connecting.....	1887	Rochester and Irondequoit.....	1878
Poughkeepsie and Delaware Valley.	1887	Rochester and Lake Beach.....	1888
Poughkeepsie and Eastern.....	1863	Rochester and Lake Ontario.....	1852
Poughkeepsie and Eastern.....	1893	Rochester and Lake Ontario.....	1879
Poughkeepsie Grand Junction.....	1879	Rochester, Lake Side and Brad-	
Poughkeepsie and Grand Junction.	1879	docks Bay.....	1861
Poughkeepsie, Hartford and Boston.	1875	Rochester and Lockport.....	1837
Poughkeepsie, Hartford and New		Rochester, Lockport and Niagara	
England.....	1887	Falls.....	1850
Poughkeepsie and Hudson.....	1889	Rochester, New York and Penn-	
Poughkeepsie and Southeastern.....	1886	sylvania.....	1880
Poughkeepsie and Southwestern.....	1883	Rochester, New York and Penn-	
Poughkeepsie Terminal.....	1887	sylvania.....	1881
Poughkeepsie and Wappingers Falls	1892	Rochester, Nunda and Pennsylvania	1870



# DATES WHEN COMPANIES FORMED.

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Name of road.	When formed.
Rochester, Nunda and Pennsylvania	1872
Rochester, Nunda and Pennsylvania Extension	1872
Rochester, Nunda and Pittsburg	1877
Rochester and Ontario Belt	1882
Rochester and Pine Creek	1870
Rochester and Pittsburg	1853
Rochester and Pittsburg	1881
Rochester and Pittsburg	1882
Rochester and Sodus Bay Railway	1898
Rochester and Sodus Bay	1902
Rochester Southern	1895
Rochester and Southern	1852
Rochester and Southern	1881
Rochester and Southern	1895
Rochester State Line	1870
Rochester and Syracuse	1850
Rochester, Syracuse and Eastern	1901
Rochester Terminal	1886
Rochester and Windsor Beach Railway	1881
Rockaway Beach and Far Rockaway Marine	1879
Rockaway Beach Railroad	1871
Rockaway Beach Transit	1881
Rockaway and Brooklyn	1863
Rockaway Electric	1885
Rockaway Electric	1897
Rockaway Elevated	1878
Rockaway Railway	1871
Rockaway Surf	1880
Rockaway Village	1886
Rockland	1902
Rockland Central	1870
Rockland Central Extension	1872
Rockland County Traction	1900
Rockland County Traction	1902
Rockland County Traction (amended certificate)	1902
Rockland Lake	1885
Rockland Lake and Valley Cottage	1882
Rome and Boonville	1882
Rome and Carthage	1888
Rome City	1885
Rome and Clinton	1869
Rome and Oneida Electric	1905
Rome and Port Ontario	1837
Rome Street	1874
Rome and Sylvan Beach	1888
Rome, Watertown and Ogdensburg	1860
Rome, Watertown and Ogdensburg Terminal	1886
Rondout and Eddyville	1895
Rondout and Kingston	1863
Rondout and Oswego	1866
Rondout and Port Jervis	1865
Rondout and Southwestern	1895
Rondout Valley	1890
Roslyn and Huntington	1874
Rutland	1901
Rutland	1902
Rutland and Whitehall	1836
Rye Lake	1874
Rye and Westchester	1871
Sacandaga Valley	1871
Sacketts Harbor and Ellisburgh	1851
Sacketts Harbor, Rome and New York	1860
Sacketts Harbor and Saratoga	1852
Sacketts Harbor and Watertown	1855
Sacketts Street	1866
Salamanca, Bedford and Allegany River	1881
Salamanca Electric Surface	1890
Salamanca and Little Valley	1901
Salamanca and Little Valley Traction	1902
Salamanca and Warren	1881
Salina and Oakwood Railway	1886
Salina and Port Watson	1829

Name of road.	When formed.
San Juan and Rio Piedras(Foreign)	1898
Saranac and Lake Placid	1890
Saranac and Lake Placid	1903
Saratoga Electric	1889
Saratoga and Fort Edward	1832
Saratoga and Hudson River	1864
Saratoga Lake	1880
Saratoga Lake	1887
Saratoga and Montgomery	1836
Saratoga and Mt. McGregor	1882
Saratoga and Mt. McGregor	1896
Saratoga, Mt. McGregor and Lake George	1882
Saratoga Northern	1897
Saratoga Rapid Transit	1890
Saratoga and Schenectady	1831
Saratoga, Schuylerville and Hoosac Tunnel	1870
Saratoga Springs and Schuylerville	1832
Saratoga Street	1887
Saratoga and St. Lawrence	1885
Saratoga and St. Lawrence Extension	1891
Saratoga Traction	1897
Saratoga and Washington	1834
Saratoga and Whitehall	1855
Saugerties and Palenville	1901
Sauquoit Valley Electric Street	1890
Schenectady	1886
Schenectady	1895
Schenectady and Albany	1890
Schenectady, Albany and North Adams	1882
Schenectady and Catskill	1846
Schenectady and Catskill	1863
Schenectady City	1873
Schenectady and Duaneburg	1873
Schenectady and Mechanicville	1867
Schenectady and Ogdensburg	1872
Schenectady and Ogdensburg Narrow Gauge	1882
Schenectady and Susquehanna	1848
Schenectady and Susquehanna	1869
Schenectady and Susquehanna	1870
Schenectady and Troy	1836
Schenectady and Utica Railway	1865
Schoharie and Otsego	1832
Schoharie Street	1872
Schoharie Valley	1865
Schoharie Valley	1874
Schoharie Valley Railway	1880
Schuylerville and Fort Edward	1870
Schuylerville and Moreau	1870
Schuylerville and Upper Hudson	1869
Schuylerville and Upper Hudson	1872
Scotia Traction	1901
Scottsville and Canandaigua	1838
Scottsville and Le Roy	1836
Sea Beach	1896
Sea Beach and Brighton	1886
Sea Beach and Sheepshead Bay	1886
Sea Breeze Avenue	1881
Sea Cliff Inclined Cable	1885
Sea Side Elevated	1880
Sea Side and Brooklyn Bridge Elevated	1890
Sea Side Transit	1880
Sea View	1886
Sea View of Coney Island	1880
Second Avenue	1853
Sedge Bank	1876
Seneca County	1891
Seneca Fall and Cayuga Lake	1886
Seneca Falls, Restvale and Cayuga Lake Street	1886
Seneca Falls and Waterloo	1889
Seneca Lake Branch	1868
Seventh Ward Railway	1886
Sharon and Root	1838
Sharon and Ceres Terminal	1908

Name of road.	When formed.
Shawmut Connecting .....	1900
Sheepshead Bay and Coney Island.	1877
Sheepshead Bay and Coney Island.	1892
Sheepshead Bay and Sea Shore ...	1865
Sherman Park and Westchester County .....	1894
Silver Creek and Dunkirk.....	1890
Silver Lake .....	1870
Silver Lake .....	1877
Sixth Avenue .....	1851
Skaneateles .....	1836
Skaneateles .....	1866
Skaneateles and Jordan .....	1841
Smithtown and Port Jefferson.....	1870
Sodus Bay and Corning.....	1872
Sodus Bay, Corning and New York.	1870
Sodus Bay and Southern.....	1883
Sodus Point and Southern.....	1852
South Beach .....	1888
South Avenue Surface .....	1890
South Brooklyn .....	1878
South Brooklyn .....	1900
South Brooklyn and Bergen Street.	1863
South Brooklyn and Flatbush .....	1866
South Brooklyn Central.....	1877
South Brooklyn Central.....	1887
South Brooklyn Railroad and Terminal .....	1887
South Brooklyn and Park .....	1870
South Brooklyn Street .....	1886
South Buffalo .....	1899
South Cairo and East Durham.....	1881
South Ferry .....	1874
South Ferry and Prospect Park.....	1874
South Ferry Railroad Company.....	1888
South Ferry and Sea Side Direct Transit .....	1881
South Park .....	1889
South Shore Traction .....	1903
South Side Connection .....	1868
South Side of Long Island.....	1861
South Vandalla and State Line.....	1897
Southern Boulevard .....	1885
Southern Central .....	1866
Southern Hempstead Branch.....	1875
Southern Long Island.....	1874
Southern New York .....	1895
Southern Westchester .....	1871
Southfield Beach .....	1899
Southfield Branch .....	1868
Speers' Quick Transit.....	1879
Springville and Sardinia .....	1878
Spuytten Duyvil and Port Morris..	1867
Squaw Island .....	1884
State Line and Eastern.....	1879
State Line and Stony Point .....	1886
Staten Island .....	1836
Staten Island .....	1852
Staten Island .....	1873
Staten Island Belt Line .....	1887
Staten Island Central .....	1871
Staten Island Electric .....	1894
Staten Island Horse .....	1866
Staten Island Interior .....	1884
Staten Island Midland .....	1880
Staten Island Northern.....	1886
Staten Island, North and South Shore .....	1881
Staten Island Rapid Transit .....	1880
Staten Island Sea Beach .....	1889
Staten Island Rapid Transit.....	1899
Staten Island Shore .....	1861
Staten Island Shore .....	1869
Staten Island Terminal .....	1883
Staten Island Terminal Electric.....	1895
Steinway (Long Island City).....	1892
Steinway Avenue and Bowers Bay.	1883
Steinway and Hunter's Point.....	1874
Steinway and Hunter's Point.....	1883
Sterling Mountain .....	1864

Name of road.	When formed.
Stillwater and Mechanville.....	1882
St. Lawrence .....	1892
St. Lawrence and Adirondack.....	1891
St. Lawrence and Adirondack.....	1896
St. Lawrence and Adirondack.....	1896
St. Lawrence International Electric Railroad and Land Company.....	1902
St. Lawrence Valley.....	1878
St. Nicholas Avenue and Crosstown	1885
St. Regis and Salmon River.....	1892
Stony Cove and Catskill Mountain..	1881
Stony Point Harbor and Terminal..	1898
Suburban Rapid Transit .....	1875
Suburban Traction .....	1892
Suspension Bridge and Erie Junction .....	1868
Susquehanna Valley Electric Traction .....	1893
Syracuse .....	1887
Syracuse .....	1898
Syracuse and Baldwinsville .....	1886
Syracuse and Baldwinsville .....	1886
Syracuse and Baldwinsville Railway .....	1891
Syracuse and Binghamton .....	1857
Syracuse, Binghamton and New York .....	1857
Syracuse, Binghamton and New York .....	1885
Syracuse Branch New York, Utica and Ogdensburg .....	1871
Syracuse and Chenango .....	1873
Syracuse and Chenango Valley.....	1868
Syracuse, Chenango and New York.	1877
Syracuse Connecting Railway .....	1866
Syracuse Consolidated Street .....	1890
Syracuse, Cortland and Binghamton .....	1836
Syracuse and East Side .....	1894
Syracuse, Eastwood Heights and DeWitt .....	1889
Syracuse Electric .....	1890
Syracuse, Fayetteville and Manlius.	1867
Syracuse and Geddes .....	1863
Syracuse, Geneva and Corning .....	1875
Syracuse, Geneva and Corning .....	1885
Syracuse Junction .....	1873
Syracuse, Lake Shore and Northern.	1905
Syracuse Mineral Springs .....	1867
Syracuse Northern .....	1868
Syracuse Northern Traction .....	1905
Syracuse and Northern .....	1885
Syracuse and Northwestern .....	1860
Syracuse and Northwestern .....	1874
Syracuse and Onondaga .....	1836
Syracuse and Onondaga .....	1868
Syracuse and Ontario .....	1882
Syracuse and Ontario .....	1903
Syracuse, Ontario and New York....	1883
Syracuse and Oneida Lake .....	1891
Syracuse and Oneida Lake Electric.	1895
Syracuse, Phoenix and Ontario .....	1882
Syracuse, Phoenix and Oswego .....	1872
Syracuse, Phoenix and Oswego .....	1885
Syracuse, Phoenix and Oswego .....	1886
Syracuse, Rapid Transit .....	1896
Syracuse and Rochester Direct .....	1850
Syracuse and South Bay .....	1886
Syracuse and South Bay .....	1900
Syracuse and Southern .....	1856
Syracuse and Southwestern .....	1876
Syracuse and Southwestern .....	1877
Syracuse and Suburban .....	1895
Syracuse, Skaneateles and Moravia.	1898
Syracuse, Skaneateles and Moravia.	1899
Syracuse Stone .....	1836
Syracuse and Utica .....	1836
Syracuse Union Street .....	1888
Syracuse Utica Direct .....	1853
Tarrytown Electric .....	1896

# DATES WHEN COMPANIES FORMED.

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Name of road.	When formed.	Name of road.	When formed.
Tarrytown, White Plains and Mamaroneck .....	1898	Ulster and Delaware .....	1902
Tenth Avenue and Grand Street...	1860	Unadilla and Schoharie .....	1836
Terminal (of Buffalo) .....	1895	Unadilla Valley .....	1890
Terminal Railroad and Tunnel .....	1900	Unadilla Valley .....	1904
Terminal Underground .....	1886	Underground (New York) .....	1896
Terminal Union .....	1889	Union .....	1851
Third Avenue .....	1853	Union (Buffalo) .....	1869
Third Avenue and Fordham .....	1861	Union of the City of Brooklyn .....	1884
Third Street (Newburgh) .....	1887	Union (New York city) .....	1892
Third Ward Railway .....	1886	Union Electric of Saratoga .....	1890
Thirty-eighth and Thirty-ninth Streets Crostown .....	1884	Union Elevated .....	1886
Thirty-first Street .....	1885	Union Passenger Railway Transfer Company of New York .....	1885
Thirty-fourth Street .....	1884	Union Pneumatic Railway .....	1867
Thirty-fourth Street Crostown .....	1896	Union Railroad Company .....	1857
Thirty-fourth Street Ferry and Eleventh Avenue .....	1885	Union Station .....	1899
Thirty-ninth Street, Brooklyn Ferry and Suburban .....	1893	Union Street .....	1890
Thirty-second Street .....	1880	Union (Syracuse) .....	1852
Tilly Foster Mine .....	1888	Union and Syracuse Straight Line .....	1852
Ticonderoga .....	1889	Union Terminal of the City of Buffalo .....	1881
Ticonderoga Union Terminal .....	1905	Union Terminal (New York, underground) .....	1902
Tioga and Erie .....	1866	Union Traction .....	1902
Tioga and Savonia .....	1875	Union Village and Johnsonville .....	1867
Tivoli Hollow .....	1893	Union (of Westchester) .....	1859
Tonawanda .....	1882	United Railroad Company (Brooklyn) .....	1897
Tonawanda, Genesee Valley and Pine Creek .....	1882	United States and Canada .....	1883
Tonawanda Electric .....	1890	United States and Canada .....	1888
Tonawanda Street .....	1890	United States Harvey-way Construction Company .....	1882
Tonawanda Valley .....	1880	United Traction .....	1899
Tonawanda Valley and Cuba .....	1881	Upper Hudson .....	1872
Tonawanda Valley and Cuba .....	1881	Upper Hudson .....	1896
Tonawanda Valley Extension .....	1881	Upper Hudson Electric and Railroad Company .....	1905
Tonawanda, Wiscoy and Genesee Valley .....	1882	Uptown Fifth Avenue .....	1885
Transit .....	1872	Utica, Adirondack and Saratoga .....	1888
Trenton and Sacketts Harbor .....	1837	Utica Belt Line .....	1886
Troy and Albion .....	1866	Utica and Binghamton .....	1853
Troy and Averill Park .....	1886	Utica and Black River .....	1861
Troy and Bennington .....	1851	Utica and Black River .....	1883
Troy and Boston .....	1849	Utica and Black River .....	1886
Troy and Chatham .....	1882	Utica, Chenango and Cortland .....	1870
Troy City .....	1867	Utica, Chenango and Susquehanna Valley .....	1866
Troy City .....	1891	Utica City .....	1862
Troy and Cohoes .....	1862	Utica, Clinton and Binghamton .....	1868
Troy and Greenbush .....	1845	Utica and Deerfield Street .....	1871
Troy and Lansingburgh .....	1860	Utica and Fair-ground .....	1875
Troy and Lansingburgh .....	1880	Utica, Georgetown and Elmira .....	1870
Troy and New England .....	1889	Utica and Herkimer Street .....	1895
Troy, Rensselaer and Pittsfield .....	1901	Utica, Horseheads and Elmira .....	1870
Troy and Rutland .....	1849	Utica and Ilion Narrow Gauge .....	1877
Troy and Saratoga .....	1871	Utica, Ithaca and Elmira .....	1872
Troy, Saratoga and Northern .....	1886	Utica, Ithaca and Elmira Railway Company .....	1878
Troy and Stockbridge .....	1836	Utica and Mohawk .....	1874
Troy and Susquehanna .....	1871	Utica and Mohawk (Street) .....	1869
Troy Terminal .....	1902	Utica and Mohawk Valley .....	1902
Troy Turnpike and Railroad .....	1831	Utica and Schenectady .....	1833
Troy Union .....	1851	Utica and Suburban .....	1896
Troy and Utica .....	1853	Utica and Susquehanna .....	1832
Tunnel Extension .....	1882	Utica and Syracuse Air Line .....	1880
Tunesassa and Bradford .....	1905	Utica and Syracuse Railway .....	1865
Tuscarora Valley .....	1892	Utica and Unadilla Valley .....	1888
Twenty-eighth and Thirtieth Street .....	1884	Utica and Waterville .....	1854
Twenty-eighth and Twenty-ninth Streets Crostown .....	1885	Utica and Waterville .....	1867
Twenty-eighth and Twenty-ninth Streets Crostown .....	1896	Valatie and Kinderhook Street .....	1889
Twenty-third Street .....	1869	Van Nest, West Farms and Westchester Traction .....	1892
Twenty-third Street .....	1872	Valley .....	1869
Twenty-third Street District Railway .....	1885	Van Brunt Street and Erie Basin .....	1861
Twenty-third Street Ferry and Newtown .....	1893	Vermont and Whitehall .....	1902
Tyrone and Geneva .....	1837	Waddington, Canton and Southern .....	1894
Ulster County .....	1836	Wakefield and Westchester Traction .....	1892
Ulster County Electric .....	1895	Walden and Orange Lake .....	1894
Ulster and Delaware .....	1875	Wall and Cortlandt Street Ferries .....	1898
		Wall Street Ferry .....	1888

Name of road.	When formed.	Name of road.	When formed.
Wallkill Transit Company.....	1905	West End of Glenwood.....	1876
Wallkill Valley.....	1877	West Farms and Westchester Traction.....	1892
Wallkill Valley Railway.....	1866	Westfield Street.....	1905
Wallula and Oswegatchie.....	1905	Western New York.....	1895
Warren County.....	1832	Western New York and Pennsylvania.....	1887
Warren County.....	1899	Western New York and Pennsylvania.....	1895
Warren and Jamestown Electric.....	1902	Westfield and Chautauqua.....	1886
Warren and Jamestown Street.....	1904	Westfield, Mayville and Chautauqua Motor.....	1897
Warren, Sugar Grove and Mayville.....	1885	Westport and Kingdom.....	1868
Warsaw and Le Roy.....	1854	West Shore.....	1863
Warwick.....	1837	West Shore.....	1885
Warwick Valley.....	1860	West Shore Hudson River.....	1868
Washington Bridge, Tremont and Westchester.....	1890	West Shore and International Bridge.....	1882
Washington County.....	1887	West Side (Binghamton).....	1887
Washington County Central.....	1855	West Side.....	1854
Washington Street, Asylum and Park.....	1887	West Side (Buffalo).....	1887
Washington Street and State Asylum.....	1872	West Side (Elmira).....	1891
Water and Clinton Street.....	1873	West Side (Elmira).....	1896
Waterford and Cohoes.....	1863	West Side Elevated Patent Railway.....	1868
Waterford and Cohoes.....	1883	West Side (New York).....	1892
Waterloo, Seneca Falls and Cayuga Lake.....	1894	West Side of Rochester.....	1887
Waterport Electric Light and Power and Railroad.....	1895	West Side and Yonkers Patent.....	1886
Watertown and Brownville Street.....	1890	West Tenth Street Connecting.....	1900
Watertown and Brownville Street.....	1894	West Troy and Green Island.....	1870
Watertown and Cape Vincent.....	1836	West Water Street.....	1890
Watertown and Carthage Traction.....	1901	Wharton Valley.....	1888
Watertown and Rome.....	1852	Whitehall and Granville Traction.....	1900
Watertown Street Railway.....	1837	Whitehall and Plattsburgh.....	1853
Watervliet and Schenectady.....	1836	Whitehall and Plattsburgh.....	1866
Watervliet Turnpike and Railroad.....	1862	Whitehall and Rutland.....	1833
Watkins and Eastern.....	1902	Whitestone and Westchester.....	1872
Watkins and Havana Street.....	1872	Whitestone and College Point.....	1893
Watkins and Havana.....	1895	Williamsbridge, Woodlawn and Westchester.....	1891
Watkins and Havana.....	1895	Williamsbridge and Westchester Traction.....	1892
Waverly and State Line.....	1867	Williamsbridge and Coney Island.....	1864
Waverly, Sayre and Athens Traction.....	1894	Williamsport and Elmira.....	1850
Wellsville, Bolivar and Eldred.....	1881	Williamsbridge and Flatbush.....	1866
Wellsville, Coudersport and Pine Creek.....	1882	Williamsburgh and Newtown.....	1866
Wellsville and Filmore.....	1882	Williamsport and Binghamton.....	1887
Wellsville, Honeoye and Ceres.....	1882	Williamstown and Redfield.....	1866
West Brooklyn.....	1887	Williamsville, Marlough and Buffalo.....	1888
West Brooklyn Electric.....	1890	Williams Terminal.....	1905
West Davenport.....	1891	Windham Traction.....	1897
West Eighty-sixth Street.....	1902	Windsor Beach and Ontario.....	1887
West Oneonta and Laurens.....	1898	Wilson Terminal.....	1889
Westchester.....	1863	Woodlawn and Butternut.....	1886
Westchester County.....	1856	Yates Avenue and Flatbush.....	1880
Westchester County.....	1878	Yonkers.....	1873
Westchester County.....	1884	Yonkers.....	1886
Westchester County Central Electric.....	1895	Yonkers.....	1896
Westchester County and New York City.....	1860	Yonkers Electric.....	1894
Westchester Electric.....	1891	Yonkers, Mt. Vernon, Pelham and New Rochelle.....	1891
Westchester and Putnam.....	1891	Yonkers and New York.....	1864
Westchester Railway.....	1881	Yonkers Rapid Transit.....	1879
Westchester and Long Island Tunnel.....	1893	Yonkers Street.....	1886
Westchester Traction.....	1901	Yonkers and Tarrytown Electric.....	1896
Westchester Traction.....	1902	Yonkers and White Plains.....	1891
Westchester and Williamsbridge Traction.....	1895	Youngstown and Buffalo.....	1888

**The Following are the Rules of Procedure Adopted by  
the Board of Railroad Commissioners in Matters  
Coming Before It.**

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***Complaints.***

Complaints to the Board against railroad companies should be made in writing, and the cause of complaint should be stated clearly. Upon receipt of a complaint (unless in the judgment of the Board immediate action is required) a copy is sent to the railroad company, which must answer within ten days, unless longer time is allowed by the Board. A copy of the answer is sent to the complainant, and, if not satisfactory, issue is joined, a hearing held and a decision rendered.

***Change of Name.***

See sections 2411-2417, Code of Civil Procedure.

***Increase of Capital Stock.***

(Section 46, Stock Corporation Law.)

Application must be made by verified petition. A date for hearing, not earlier than ten days after the receipt of the petition, will be fixed. Accompanying the petition there must be:

*First.* Three certificates of the proceedings of the meeting of the stockholders, two to be endorsed (if the application is approved) and one to be filed in this office.

*Second.* A sworn statement, in detail, of the financial condition of the company, giving the amount of capital stock authorized and amount issued; outstanding indebtedness; and other pertinent information, and a sworn statement, in detail, of the cost of road and equipment.

*Third.* A sworn statement, in detail, of the purposes to which the proposed increase of stock is proposed to be devoted, and, if for further construction and equipment, a verified estimate, in detail, of the cost thereof, made by a person competent to make the same.

*Reduction of Capital Stock.*

(Section 46, Stock Corporation Law.)

Application must be made by verified petition. A date for hearing will be fixed. The Board requires:

*First.* Three certificates of the proceedings of the meeting of the stockholders, two to be endorsed and one to be filed in this office.

*Second.* A sworn statement from the proper officer of the company that the reduced capital is sufficient for the proper purposes of the corporation and is in excess of its debts and liabilities, the aggregate amount of such debts and liabilities to be stated.

*Consent to the Issue of Mortgage.*

(Subdivision 10, Section 4, Railroad Law.)

Application must be made by verified petition, stating what the lien is to be. A date for hearing, not earlier than ten days after the receipt of the petition, will be fixed. Accompanying the petition there must be:

*First.* Proof of consent of the stockholders under the statute.

*Second.* A sworn statement, in detail, of the financial condition of the company, giving the amount of the capital stock authorized and amount issued, and amount of mortgage bonds authorized and amount outstanding, and amount of other indebtedness of the company, as well as other pertinent information; also a sworn statement, in detail, of the cost of road and equipment.

*Third.* A sworn statement, in detail, of the purposes to which the proceeds of the proposed mortgage are to be devoted, and, if for further construction and equipment, a verified estimate, in detail, of the cost thereof, made by a person competent to make the same. A copy of the mortgage must be filed with the Board.

*Filing of Maps of Railroads.*

(Section 6, Railroad Law.)

Section 6 of the Railroad Law shows in detail what is required.

*Sign Boards at Crossings.*

(Section 33, Railroad Law.)

Application must be made by verified petition, which shall state the application in detail, following the provisions of the section. A date for hearing will be fixed. Accompanying the petition there must be a print or drawing in detail of the sign or signs of which approval is asked.

*Discontinuance of Railroad Stations.*

(Section 34, Railroad Law.)

Application must be made by verified petition. The Board will in each case prescribe rules for proof in applications under this section.

*Accommodation of Connecting Railroads.*

(Section 35, Railroad Law.)

Application must be made by verified petition. The Board will in each case prescribe rules for proof in applications under this section.

*Railroads Crossing Each Other at Grade.*

(Section 36, Railroad Law. See Section 68, Railroad Law.)

Application must be made by verified petition. The Board requires:

*First.* As to the precedence of trains: The Board will in each case prescribe rules for proof in applications under this provision.

*Second.* In applications for approval of an interlocking switch and signal apparatus at such crossings, a hearing will be given at which a blue print or sketch of the proposed system must be submitted to the Board, which shall show distant signals at least 1,500 feet from the crossing (except where impracticable), home signals and throw-off switches (except where impracticable), all interlocking and operated from a tower.

*Safety Devices.*

(Section 50, Railroad Law.)

Application must be made by verified petition. Applications under this section will be considered under rules made for each case.

*Cooking Stoves Used in Dining Cars.*

(Section 51, Railroad Law.)

Application must be made by verified petition. In applications under this section for approval of cooking stoves in dining cars, the Board must see the stove proposed to be used, or a blue print or sketch of it.

*Cessation of Operation of Railroads During the Winter Months.*

(Section 55, Railroad Law. See Section 21, Railroad Law.)

Application must be made by verified petition. The Board will require notice of hearing on applications under this section to be advertised. Proof must be furnished that the road comes within the meaning of the section, and that the public interests will not suffer from the cessation of operation. If the application is granted, proof must be subsequently made that the order has been posted as required by section 55.

*Firing Compensation for Transportation of the Mails.*

(Section 56, Railroad Law.)

Rules of procedure under this section will be formulated in each case.

*Extension of Time in which to File Reports of Railroad Companies.*

(Section 57, Railroad Law.)

Application under this section must be accompanied by a statement of the reasons why an extension of time in which to file reports is necessary.

*Certificate that Public Convenience and a Necessity Requires the Construction of a New Railroad.*

(Section 59, Railroad Law.)

Application must be made by verified petition. The Board requires:

*First.* Proof of the publication of a certified copy of the articles of association of the company, as required by section 59, and proof that the application is made within six months after the completion of such publication. There must also be filed certified typewritten copies of the articles of association from the Secretary of State's and county clerks offices.

*Second.* Public notice of the application and hearing before the Board must be published in such form and in such newspapers as the Board shall direct.

*Third.* At the hearing, proof must be made by oral evidence that public convenience and a necessity require the construction of the railroad.

*Fourth.* A map and profile of the line as proposed, and showing the streets, avenues and highways and other railroads to be crossed.

*Fifth.* Proof must be made of the bona fides of the enterprise, and of the financial ability of the projectors to build the road.



*Grade Crossing Law.*

(Sections 60-69, Railroad Law.)

The procedure is prescribed in the statute, except as to section 68.

*First.* As to section 68, application must be made by verified petition which shall ask the Board to determine whether the crossing "shall be above, below or at grade of such existing railroad" and to "in such determination fix the proportion of expense of such crossing to be paid by each railroad." The petition must state number of tracks proposed to be crossed and number proposed to cross; also widths of right of way where the proposed crossing is on private right of way.

*Second.* Public notice of the application under section 68 and hearing before the Board must be published in such form and in such newspapers as the Board shall direct.

(See Section 2, Chapter 239, Laws 1893.)

*Consolidation or Lease of Parallel and Competing Steam Railroads.*

(Section 80, Railroad Law.)

Application must be made by verified petition. Rules for the consideration of applications under this section will be established by the Board in each case.

*As to Liability of Reorganized Railroad Company to Extend Its Road.*

(Section 83, Railroad Law.)

Application must be made by verified petition. Rules for the consideration of applications under this section will be established by the Board in each case.

*Motive Power of Street Railroads.*

(Section 100, Railroad Law.)

Application must be made by verified petition. The Board requires:

*First.* Publication of notice of hearing of the application, in such form and in such newspapers as the Board shall direct.

*Second.* At the hearing, oral evidence in contested cases, and in uncontested cases, affidavit or affidavits of competent persons showing the total value of the property bounded on that portion of the railroad with respect to which a change of motive power is proposed, and the value of the property the owners of which have consented to the use of the motive power proposed.

*Use of Tracks of a Street Railroad.*

(Section 102, Railroad Law.)

Rules for procedure under this section will be prescribed in each case.

*Abandonment of Part of Route of a Street Surface Railroad.*

(Section 103, Railroad Law.)

Application must be made by verified petition. The Board requires:

*First.* Two originals of the declaration of abandonment, adopted as required by the section.

*Second.* Notice of hearing on the application shall be published in such form and in such newspapers as the Board shall prescribe.

*Third.* Proof must be made by affidavit in uncontested cases, and by oral evidence in contested cases, that the portion of the route proposed to be abandoned is no longer necessary for "the successful operation of its road and convenience of the public."

*Change of Gauge of Railroads.*

(Chapter 267, Laws 1891.)

Application must be made by verified petition. The Board will require proof that stockholders owning three-fourths in amount of the capital stock of the company have voted at a special meeting called for that purpose in favor of changing the gauge of the railroad. Also such further information as it in each case shall designate.

*Relative to Abandonment of Route by Elevated Railroads.*

(Chapter 294, Laws 1891.)

Application must be made by verified petition. In applications under this act the Board will make rules in each case.

*As to Lighting and Ventilating Tunnels.*

(Chapter 360, Laws 1891.)

Rules for procedure under this act will be fixed in each case.

*Laying Street Railroad Track Across Steam Railroad where there are Three or More Steam Railroad Tracks.*

(Section 2, chapter 239, Laws 1893.)

Application must be made by verified petition. At the hearing the company making the application must furnish the Board with a map or sketch, showing the crossing and the locality surrounding it.

(See Section 68, Railroad Law.)



## TRAVELING EXPENSES OF THE BOARD.

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Traveling expenses of the Board of Railroad Commissioners for the year ending September 30, 1905, as filed and audited by items in the office of the Comptroller of the State. (Limited by article VI, Railroad Law, to \$900 a month, in the aggregate, aside from special appropriations.)

Of the Commissioners.....	\$1,266 25
Of the Assistant Secretary.....	35 20
Of the Inspector, Accountant, Stenographers and Clerks.....	1,471 45
Of the Electrical Expert.....	1,086 75
Total.....	<u>\$3,859 65</u>

### FROM SPECIAL APPROPRIATIONS.

Of the Commissioners.....	\$420 00
Of the Grade Crossing Superintendent and Grade Crossing Inspector .....	724 22
Total.....	<u>\$1,144 22</u>
Grand total, all traveling expenses.....	<u>\$5,003 87</u>



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# APPENDIX.

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## LAWS APPLICABLE TO RAILROAD COMPANIES.

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[Compiled by the Board of Railroad Commissioners.]

*FIRST* — CHAPTER 95, LAWS OF 1890, KNOWN AS THE "CONDEMNATION LAW," AND "PROCEEDINGS TO CHANGE THE NAME OF A CORPORATION."

*SECOND* — CHAPTER 563, LAWS OF 1890, KNOWN AS THE "GENERAL CORPORATION LAW."

*THIRD* — CHAPTER 564, LAWS OF 1890, KNOWN AS THE "STOCK CORPORATION LAW."

*FOURTH* — CHAPTER 565, LAWS OF 1890, KNOWN AS THE "RAILROAD LAW."

ALSO, OTHER GENERAL LAWS RELATING TO RAILROADS. ALSO, SECTIONS OF THE CODE OF CRIMINAL PROCEDURE AND PENAL CODE RELATING DIRECTLY TO RAILROADS. ALSO, THE RAPID TRANSIT ACT. ALL AS AMENDED TO AND INCLUDING THE SESSION OF THE LEGISLATURE OF 1905. ALSO, THE INTERSTATE COMMERCE ACT, WITH KINDRED ACTS, AS AMENDED TO SEPTEMBER 30, 1905.

A FEW CITATIONS TO DECISIONS OF COURTS ARE GIVEN.

# **\* THE CONDEMNATION LAW**

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## **CHAP. 95, LAWS OF 1890.**

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### **AN ACT to amend the Code of Civil Procedure.**

(As amended to and including the session of the Legislature of 1905.)

## **CHAPTER XXIII OF THE CODE OF CIVIL PROCEDURE.**

### **SUPPLEMENTAL PROVISIONS.**

#### **TITLE I.**

#### **PROCEEDINGS FOR THE CONDEMNATION OF REAL PROPERTY.**

#### **Condemnation law.**

**SECTION 3357.** This title shall be known as the condemnation law.

#### **Terms used defined.**

§ 3358. The term "person," when used herein, includes a natural person and also a corporation, joint stock association, the state and a political division thereof, and any commission, board, board of managers or trustees in charge or having control of any of the charitable or other institutions of the state; the term "real property," any right, interest or easement therein or appurtenances thereto; and the term "owner," all persons having any estate, interest, or easement in the property to be taken, or any lien, charge, or incumbrance thereon. The person instituting the proceedings shall be termed the plaintiff; and the person against whom the proceeding is brought, the defendant.

Thus amended by chap. 549, Laws of 1896. See said chapter.

#### **Title to real estate, how acquired.**

§ 3359. Whenever any person is authorized to acquire title to real property, for a public use by condemnation the proceeding for that purpose shall be taken in the manner prescribed in this title.

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\* See provisions of Rapid Transit Act, *post*.

**Petition to Supreme Court; petition what to contain.**

§ 3360. The proceeding shall be instituted by the presentation of a petition by the plaintiff to the supreme court setting forth the following facts:

1. His name, place of residence, and the business in which engaged; if a corporation or joint-stock association, whether foreign or domestic, its principal place of business within the state, the names and places of residence of its principal officers, and of its directors, trustees or board of managers, as the case may be, and the object or purpose of its incorporation or association; if a political division of the state, the names and places of residence of its principal officers; and if the state or any commission or board of managers or trustees in charge or having control of any of the charitable or other institutions of the state, the name, place of residence of the officer acting in its or their behalf in the proceedings.

Subdivision 1 thus amended by chap. 589, Laws of 1896. see said chapter.

2. A specific description of the property to be condemned and its location, by metes and bounds, with reasonable certainty.

3. The public use for which the property is required and a concise statement of the facts showing the necessity of its acquisition for such use.

4. The names and places of residence of the owners of the property; if an infant, the name and place of residence of his general guardian, if he has one, if not, the name and place of residence of the person with whom he resides; if a lunatic, idiot, or habitual drunkard, the name and place of residence of his committee or trustee, if he has one; if not, the name and place of residence of the person with whom he resides. If a non-resident, having an agent or attorney residing in the state authorized to contract for the sale of the property, the name and place of residence of such agent or attorney; if the name or place of residence of any owner can not after diligent inquiry be

ascertained, it may be so stated with a specific statement of the extent of the inquiry which has been made.

5. That the plaintiff has been unable to agree with the owner of the property for its purchase and the reason of such inability.

6. The value of the property to be condemned.

7. A statement that it is the intention of the plaintiff, in good faith, to complete the work or improvement, for which the property is to be condemned; and that all the preliminary steps required by law have been taken to entitle him to institute the proceeding.

8. A demand for relief, that it may be adjudged that the public use requires the condemnation of the real property described, and that the plaintiff is entitled to take and hold such property for the public use specified, upon making compensation therefor, and that commissioners of appraisal be appointed to ascertain the compensation to be made to the owners for the property so taken.

**Notice of presentation of petition; service of petition and notice.**

§ 3361. There must be annexed to the petition a notice of the time and place at which it will be presented to a special term of the supreme court, held in the judicial district where the property or some portion of it is situated, and a copy of the petition and notice must be served upon all the owners of the property at least eight days prior to its presentation.

**Service, how made.**

§ 3362. Service of the petition and notice must be made in the same manner as the service of a summons in an action in the supreme court is required to be made, and all the provisions of articles one and two of title one of chapter five of this act, which relate to the service of a summons, either personally or in any other way, and the mode of proving service, shall apply to the service of the petition and notice. If the defendant has an agent or attorney residing in this state, authorized to contract for the

sale of the real property described in the petition, service upon such agent or attorney will be sufficient service upon such defendant. In case the defendant is an infant of the age of fourteen years or upwards, a copy of the petition and notice shall also be served upon his general guardian, if he has one, if not, upon the person with whom he resides.

**Duty of general guardian, committee or trustee; court, when to appoint guardian ad litem; when, attorney for defendant.**

§ 3363. If a defendant is an infant, idiot, lunatic or habitual drunkard, it shall be the duty of his general guardian, committee or trustee, if he has one, to appear for him upon the presentation of the petition and attend to his interests, and in case he has none, or in case his general guardian, committee or trustee fails to appear for him, the court shall, upon the presentation of the petition and notice, with proof of service, without further notice, appoint a guardian ad litem for such defendant, whose duty it shall be to appear for him and attend to his interests in the proceeding, and, if deemed necessary to protect his rights, the court may require a general guardian, committee or trustee, or a guardian ad litem to give security in such sum and with such sureties as the court may approve. If a service other than personal has been made upon any defendant, and he does not appear upon the presentation of the petition, the court shall appoint some competent attorney to appear for him and attend to his interests in the proceeding.

**Appearance of parties; service of papers.**

§ 3364. The provisions of law and of the rules and practice of the court, relating to the appearance of parties in person or by attorney in actions in the supreme court, shall apply to the proceeding from and after the service of the petition, and all subsequent orders, notices and papers may be served upon the attorney appearing and upon a guardian ad litem in the same manner and with the same effect as the service of papers in an action in the supreme court may be made.

**Answer to petition.**

§ 3365. Upon presentation of the petition and notice with proof of service thereof, an owner of the property may appear and interpose an answer, which must contain a general or specific denial of each material allegation of the petition controverted by him, or of any knowledge or information thereof sufficient to form a belief, or a statement of new matter constituting a defense to the proceeding.

**Verification of petition and answer.**

§ 3366. A petition or answer must be verified, and the provisions of this act relating to the form and contents of the verification of pleadings in courts of record, and the persons by whom it may be made, shall apply to the verification.

**Trial of issue and decision thereon.**

§ 3367. The court shall try any issue raised by the petition and answer at such time and place as it may direct, or it may order the same to be referred to a referee to hear and determine, and upon such trial the court or referee shall file a decision in writing, or deliver the same to the attorney for the prevailing party, within twenty days after the final submission of the proofs and allegations of the parties, and the provisions of this act relating to the form and contents of decisions upon the trial of issues of fact by the court or a referee, and to making and filing exceptions thereto, and the making and settlement of a case for the review thereof upon appeal, and to the proceedings which may be had, in case such decision is not filed or delivered within the time herein required, and to the powers of the court and referee upon such trial, shall be applicable to a trial and decision under this title.

**Provisions applicable.**

§ 3368. The provisions of title one of chapter eight of this act shall also apply to proceedings had under this title.

**Judgment, entry of; etc.**

§ 3369. Judgment shall be entered pursuant to the direction of the court or referee in the decision filed. If in favor of the defendant the petition shall be dismissed, with costs to be taxed by the clerk at the same rates as are allowed, of course, to a defendant prevailing in an action in the supreme court, including the allowances for proceedings before and after notice of trial. If the decision is in favor of the plaintiff, or if no answer has been interposed and it appears from the petition that he is entitled to the relief demanded, judgment shall be entered, adjudging that the condemnation of the real property described is necessary for the public use, and that the plaintiff is entitled to take and hold the property for the public use specified, upon making compensation therefor, and the court shall thereupon appoint three disinterested and competent freeholders, residents of the judicial district embracing the county where the real property, or some part of it, is situated, or of some county adjoining such judicial district, commissioners to ascertain the compensation to be made to the owners for the property to be taken for the public use specified, and fix the time and place for the first meeting of the commissioners. Provided, however, that in any such proceeding instituted within the first or second judicial district, such commissioners shall be residents of the county where the real property, or some part of it, is situated, or of some adjoining county. If a trial has been had, at least eight days' notice of such appointment must be given to all the defendants who have appeared. The parties may waive, in writing, the provisions of this section as to the residence of the commissioners, and in that case they may be residents of any county in the state. Where owners of separate properties are joined in the same proceeding, or separate properties of the same owner are to be condemned, more than one set of commissioners may be appointed.

Thus amended by chap. 530, Laws of 1895.

**Duty of commissioners; report; compensation.**

§ 3370. The commissioners shall take and subscribe the constitutional oath of office. Any of them may issue subpoenas and administer oaths to witnesses; a majority of them may adjourn the proceeding before them, from time to time in their discretion. Whenever they meet, except by appointment of the court or pursuant to adjournment, they shall cause at least eight days' notice of such meeting to be given to the defendants who have appeared, or their agents or attorneys. They shall view the premises described in the petition, and hear the proof and allegations of the parties, and reduce the testimony taken by them, if any, to writing, and after the testimony in each case is closed, they, or a majority of them, all being present, shall, without unnecessary delay ascertain and determine the compensation which ought justly to be made by the plaintiff to the owners of the property appraised by them; and, in fixing the amount of such compensation, they shall not make any allowance or deduction on account of any real or supposed benefits which the owners may derive from the public use for which the property is to be taken, or the construction of any proposed improvement connected with such public use. But in case the plaintiff is a railroad corporation and such real property shall belong to any other railroad corporation, the commissioners on fixing the amount of such compensation, shall fix the same at its fair value for railroad purposes. They shall make a report of their proceedings to the supreme court with the minutes of the testimony taken by them, if any; and they shall each be entitled to six dollars for services for every day they are actually engaged in the performance of their duties, and their necessary expenses, to be paid by the plaintiff; provided, that in proceedings within the counties of New York and Kings such commissioners shall be entitled to such additional compensation not exceeding twenty-five dollars for every such day, as may be awarded by the court.

Thus amended by chap. 384, Laws of 1898, taking effect September 1, 1898.

As to condemning railroad property, see section 7, Railroad Law, *post*.



**Confirmation of report; rehearing before commissioners; final order; deposit of money deemed payment.**

§ 3371. Upon filing the report of the commissioners, any party may move for its confirmation at a special term, held in the district where the property or some part of it is situated, upon notice to the other parties who have appeared, and upon such motion, the court may confirm the report, or may set it aside for irregularity, or for error of law in the proceedings before the commissioners, or upon the ground that the award is excessive or insufficient. If the report is set aside, the court may direct a rehearing before the same commissioners, or may appoint new commissioners for that purpose, and the proceedings upon such rehearing shall be conducted in the manner prescribed for the original hearing, and the same proceedings shall be had for the confirmation of the second report, as are herein prescribed for the confirmation of the first report. If the report is confirmed, the court shall enter a final order in the proceeding, directing that compensation shall be made to the owners of the property, pursuant to the determination of the commissioners, and that upon payment of such compensation, the plaintiff shall be entitled to enter into the possession of the property condemned, and take and hold it for the public use specified in the judgment. Deposit of the money to the credit of, or payable to the order of the owner, pursuant to the direction of the court, shall be deemed a payment within the provisions of this title.

**Offer to purchase by plaintiff; notice of acceptance of offer; costs and allowances.**

§ 3372. In all cases where the owner is a resident and not under legal disability to convey title to real property the plaintiff before service of his petition and notice, may make a written offer to purchase the property at a specified price, which must within ten days thereafter be filed in the office of the clerk of the county where the property is situated; and which cannot be given in evidence before the commissioners, or considered by

them. The owner may at the time of the presentation of the petition, or at any time previously, serve notice in writing of the acceptance of plaintiff's offer, and thereupon the plaintiff may, upon filing the petition, with proof of the making of the offer and its acceptance, enter an order that upon payment of the compensation agreed upon, he may enter into possession of the real property described in the petition, and take and hold it for the public use therein specified. If the offer is not accepted, and the compensation awarded by the commissioners does not exceed the amount of the offer with interest from the time it was made, no costs shall be allowed to either party. If the compensation awarded shall exceed the amount of the offer with interest from the time it was made, or if no offer was made, the court shall, in the final order, direct that the defendant recover of the plaintiff the costs of the proceeding, to be taxed by the clerk at the same rate as is allowed, of course, to the defendant when he is the prevailing party in an action in the supreme court, including the allowances for proceedings before and after notice of trial and the court may also grant an additional allowance of costs, not exceeding five per centum upon the amount awarded. The court shall also direct in the final order what sum shall be paid to the general or special guardian, or committee or trustee of an infant, idiot, lunatic or habitual drunkard, or to an attorney appointed by the court to attend to the interests of any defendant upon whom other than personal service of the petition and notice may have been made, and who has not appeared, for costs, expenses and counsel fees, and by whom or out of what fund the same shall be paid. If a trial has been had, and all the issues determined in favor of the plaintiff, costs of the trial shall not be allowed to the defendant, but the plaintiff shall recover of any defendant answering the costs of such trial caused by the interposition of the unsuccessful defense, to be taxed by the clerk at the same rate as is allowed to the prevailing party for the trial of an action in the supreme court.

**Compensation awarded, etc., to be docketed as a judgment; delivery of possession; issue of writ of assistance.**

§ 3373. Upon the entry of the final order, the same shall be attached to the judgment roll in the proceeding, and the amount directed to be paid, either as compensation to the owners, or for the costs or expenses of the proceeding, shall be docketed as a judgment against the person who is directed to pay the same, and it shall have all the force and effect of a money judgment in an action in the supreme court, and collection thereof may be enforced by execution and by the same proceedings as judgments for the recovery of money in the supreme court may be enforced under the provisions of this act. When payment of the compensation awarded, and costs of the proceeding, if any, has been made, as directed in the final order, and a certified copy of such order has been served upon the owner, he shall, upon demand of the plaintiff, deliver possession thereof to him, and in case possession is not delivered when demanded, the plaintiff may apply to the court without notice, unless the court shall require notice to be given, upon proof of such payment and of service of the copy order, and of the demand and non-compliance therewith, for a writ of assistance, and the court shall thereupon cause such writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property.

**Abandonment and discontinuance of proceeding.**

§ 3374. Upon the application of the plaintiff to be made at any time after the presentation of the petition and before the expiration of thirty days after the entry of the final order, upon eight days' notice of motion to all other parties to the proceeding who have appeared therein or upon an order to show cause, the court may, in its discretion, and for good cause shown, authorize and direct the abandonment and discontinuance of the proceeding, upon payment of the fees and expenses, if any, of the commissioners, and the costs and expenses directed to be

paid in such final order, if such final order shall have been entered, and upon such other terms and conditions as the court may prescribe; and upon the entry of the order granting such application and upon compliance with the terms and conditions therein prescribed, payment of the amount awarded for compensation, if such compensation shall have been theretofore awarded, shall not be enforced, but in such case, if such abandonment and discontinuance of the proceeding be directed upon the application of the plaintiff, the order granting such application, if permitting a renewal of such proceedings, shall provide that proceedings to acquire title to such lands or any part thereof shall not be renewed by the plaintiff without a tender or deposit in court of the amount of the award and interest thereon.

Thus amended by chap. 475, Laws of 1894.

#### **Appeal from final order; stay of proceedings.**

§ 3375. Appeal may be taken to the general term of the supreme court from the final order, within the time provided for appeals from orders by title four of chapter twelve of this act; and all the provisions of such chapter relating to appeals to the general term from orders of the special term shall apply to such appeals. Such appeal will bring up for review all the proceedings subsequent to the judgment, but the judgment and proceedings antecedent thereto may be reviewed on such appeal, if the appellant states in his notice that the same will be brought up for review, and exceptions shall have been filed to the decision of the court or the referee, and a case or a case and exceptions shall have been made, settled and allowed, as required by the provisions of this act, for the review of the trial of actions in the supreme court without a jury. The proceedings of the plaintiff shall not be stayed upon such an appeal, except by order of the court, upon notice to him, and the appeal shall not affect his possession of the property taken, and the appeal of a defendant shall not be heard except on his stipulation not to disturb such possession.

**Appeal from judgment in favor of defendant.**

§ 3376. If a trial has been had and judgment entered in favor of the defendant, the plaintiff may appeal therefrom to the general term within the time provided for appeals from judgments by title four of chapter twelve of this act, and all the provisions of such chapter relating to appeals from judgments shall apply to such appeals; and on the hearing of the appeal the general term may affirm, reverse or modify the judgment, and in case of reversal may grant a new trial, or direct that judgment be entered in favor of the plaintiff. If the judgment is affirmed, costs shall be allowed to the respondent, but if reversed or modified, no costs of the appeal shall be allowed to either party.

**New appraisal.**

§ 3377. On the hearing of the appeal from the final order the court may direct a new appraisal before the same or new commissioners, in its discretion, and the report of such commissioners shall be final and conclusive upon all parties interested. If the amount of the compensation to be paid is increased by the last report, the difference shall be a lien upon the land appraised, and shall be paid to the parties entitled to the same, or shall be deposited as the court shall direct; and if the amount is diminished, the difference shall be refunded to the plaintiff by the party to whom the same may have been paid, and judgment therefor may be rendered by the court, on the filing of the last report, against the parties liable to pay the same.

**Adverse and conflicting claimants to money.**

§ 3378. If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property taken, the court may direct the money to be paid into the court by the plaintiff, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may, in its discretion, order a reference to ascertain the facts on which such determination and direction are to be made.

**Allowance of costs in certain cases.**

§ 3379. At any stage of the proceeding the court may authorize the plaintiff, if in possession of the property sought to be condemned, to continue in possession, and may stay all actions or proceedings against him on account thereof, upon giving security, or depositing such sum of money as the court may direct to be held as security for the payment of the compensation which may be finally awarded to the owner therefor and the costs of the proceedings, and in every such case the owner may conduct the proceeding to a conclusion, if the plaintiff delays or neglects to prosecute the same. When the final award to any owner is less than fifty dollars, in proceedings to condemn a right of way, for telephone or telegraph poles and wires, the allowance of costs, if any, and the amount thereof not exceeding that prescribed by statute, shall be in the discretion of the court in any action or proceeding that may have been or may hereafter be stayed, if the telephone or telegraph poles and wires, in such action or proceeding so stayed, shall have been erected for more than three years prior to the commencement thereof.

Thus amended by chap. 774, Laws of 1900, taking effect September 1, 1900.

**Entry upon and use of property after answer has been interposed.**

§ 3380. When an answer to the petition has been interposed, and it appears to the satisfaction of the court that the public interests will be prejudiced by delay, it may direct that the plaintiff be permitted to enter immediately upon the real property to be taken, and devote it temporarily to the public use specified in the petition, upon depositing with the court the sum stated in the answer as the value of the property, and which sum shall be applied, so far as it may be necessary for that purpose, to the payment of the award that may be made, and the costs and expenses of the proceeding, and the residue, if any, returned to the plaintiff, and, in case the petition should be dismissed, or no award should be made, or the proceedings

should be abandoned by the plaintiff, the court shall direct that the money so deposited, so far as it may be necessary, shall be applied to the payment of any damages which the defendant may have sustained by such entry upon and use of his property, and his costs and expenses of the proceeding, such damages to be ascertained by the court, or a referee to be appointed for that purpose, and if the sum so deposited shall be insufficient to pay such damages, and all costs and expenses awarded to the defendant, judgment shall be entered against the plaintiff for the deficiency, to be enforced and collected in the same manner as a judgment in the supreme court; and the possession of the property shall be restored to the defendant.

**Notice of pendency of proceedings; effect thereof; duty of county clerk.**

§ 3381. Upon service of the petition, or at any time afterwards before the entry of the final order, the plaintiff may file in the clerk's office of each county where any part of the property is situated, a notice of the pendency of the proceeding stating the names of the parties and the object of the proceeding, and containing a brief description of the property affected thereby, and from the time of filing, such notice shall be constructive notice to a purchaser, or incumbrancer of the property affected thereby, from or against a defendant with respect to whom the notice is directed to be indexed, as herein prescribed, and a person whose conveyance or incumbrance is subsequently executed or subsequently recorded, is bound by all proceedings taken in the proceeding, after the filing of the notice, to the same extent as if he was a party thereto. The county clerk must immediately record such notice when filed in the book in his office kept for the purpose of recording notices of pendency of actions, and index it to the name of each defendant specified in the direction appended at the foot of the notice, and subscribed by the plaintiff or his attorney.

**Power of court to make all necessary orders, etc.**

§ 3382. In all proceedings under this title, where the mode or manner of conducting all or any of the proceedings therein is not expressly provided for by law, the court before whom such proceedings may be pending, shall have the power to make all necessary orders and give necessary directions to carry into effect the object and intent of this title, and of the several acts conferring authority to condemn lands for public use, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

**Repeal.**

§ 3383. So much of all acts and parts of acts as prescribe a method of procedure in proceedings for the condemnation of real property for a public use is repealed, except such acts and parts of acts as prescribe a method of procedure for the condemnation of real property for public use as a highway, or as a street, avenue, or public place in an incorporated city or village, or as may prescribe methods of procedure for such condemnation for any public use for, by, on behalf, on the part, or in the name of the corporation of the city of New York, known as the mayor, aldermen, and commonalty of the city of New York, or by whatever name known, or by or on the application of any board, department, commissioners or other officers acting for or on behalf or in the name of such corporation or city, or where the title to the real property so to be acquired vests in such corporation or in such city; and all proceedings for the condemnation of real property embraced within the exceptions enumerated in this section are exempted from the operation of this title.

Thus amended by chap. 247, Laws of 1890.

**Title, when to take effect.**

§ 3384. This title shall take effect on the first day of May, one thousand eight hundred and ninety, and shall not affect any proceeding previously commenced.



## TITLE II.

### PROCEEDINGS FOR THE SALE OF CORPORATE REAL PROPERTY.

#### Proceeding on application to sell, mortgage, etc., property.

SECTION 3390. Whenever any corporation or joint stock association is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had pursuant to the provisions of this title.

#### Petition to court; petition, what to contain; verification.

§ 3391. The proceeding shall be instituted by the presentation to the supreme court of the district or the county court of the county where the real property, or some part of it, is situated, by the corporation or association, applicant, of a petition setting forth the following facts:

1. The name of the corporation or association, and of its directors, trustees or managers, and of its principal officers, and their places of residence.

2. The business of the corporation or association, or the object or purpose of its incorporation or formation, and a reference to the statute under which it was incorporated or formed.

3. A description of the real property to be sold, mortgaged or leased, by metes and bounds, with reasonable certainty.

4. That the interest of the corporation or association will be promoted by the sale, mortgage or lease, of the real property specified, and a concise statement of the reasons therefor.

5. That such sale, mortgage or lease has been authorized, by a vote of at least two-thirds of the directors, trustees or managers of the corporation or association, at a meeting thereof, duly called and held, and a copy of the resolution granting such authority.

6. The market value of the remaining real property of the corporation or association, and the cash value of its personal assets, and the total amount of its debts and liabilities, and how secured, if at all.

7. The application proposed to be made of the moneys realized from such sale, mortgage or lease.

8. Where the consent of the shareholders, stockholders or members of the corporation or association, is required by law to be first obtained, a statement that such consent has been given, and a copy of the consent or a certified transcript of the record of the meeting at which it was given, shall be annexed to the petition.

9. A demand for leave to mortgage, lease or sell the real estate described.

The petition shall be verified in the same manner as a verified pleading in an action in a court of record.

#### Hearing of application.

§ 3392. Upon presentation of the petition, the court may immediately proceed to hear the application, or it may, in its discretion, direct that notice of the application shall be given to any person interested therein, as a member, stockholder, officer or creditor of the corporation or association, or otherwise, in which case the application shall be heard at the time and place specified in such notice, and the court may in any case appoint a referee to take the proofs and report the same to the court, with his opinion thereon.

#### Court may grant application; appearance on hearing.

§ 3393. Upon the hearing of the application, if it shall appear, to the satisfaction of the court, that the interests of the corporation or association will be promoted thereby, an order may be granted authorizing it to sell, mortgage or lease the real property described in the petition, or any part thereof, for such sum, and upon such terms as the court may prescribe, and directing what disposition shall be made of the proceeds of such sale, mortgage or lease.

Any person, whose interests may be affected by the proceeding, may appear upon the hearing and show cause why the application should not be granted.

**Notice to creditors on application of insolvent corporation, etc.**

§ 3394. If the corporation or association is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application shall not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application will be heard.

**Service of notices.**

§ 3395. Service of notices, provided for in this title, may be made either personally or, in case of absence, by leaving the same at the place of residence of the person to be served, with some person of mature age and discretion, at least eight days before the hearing of the application, or by mailing the same, duly enveloped and addressed and postage paid, at least sixteen days before such hearing.

**Power of court to make all necessary orders.**

§ 3396. In all applications made under this title, where the mode or manner of conducting any or all of the proceedings thereon are not expressly provided for, the court before whom such application may be pending, shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this title, or of any act authorizing the sale of corporate real property, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

**Title, when to take effect.**

§ 3397. This title shall take effect May first, one thousand eight hundred and ninety, and shall not affect any proceeding previously commenced.

# Proceedings to Change the Name of a Corporation.

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## CODE OF CIVIL PROCEDURE.

See section 2410 as to change of name of an individual.

### Petition by corporation.

§ 2411. A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved if a banking corporation by the superintendent of banks; if an insurance corporation, by the superintendent of insurance, and if a railroad corporation, by the board of railroad commissioners. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of state, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive.

Thus amended by chap. 366, Laws of 1893.

### Contents of petition.

§ 2412. The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, the

name, age and residence of the individual whose name is proposed to be changed, and the name which he proposes to assume, and if the petitioner be a corporation, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer.

Thus amended by chap. 366, Laws of 1893.

#### Notice of presentation of petition.

§ 2413. If the petition be to change the name of an infant, and is made by the infant's next friend, notice of the time and place when and where the petition will be presented must be served upon the father, or if he is dead or cannot be found, upon the mother, or if both are dead or cannot be found, upon the general guardian or guardian of the person of the infant, in like manner as a notice of a motion upon an attorney in an action, unless it appears to the satisfaction of the court that the infant has no father or mother, or that both reside without the state or cannot be found, and that he has no guardian residing within this state, in which case the court may dispense with notice or require notice to be given to such persons and in such manner as the court thinks proper. If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for six successive weeks in the state paper, and in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corpora-

## 24 PROCEEDINGS TO CHANGE THE NAME OF A CORPORATION.

tion, other than a town or county cooperative insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the railroad commissioners. In the city and county of New York such notice shall be published once in each week for six successive weeks in two daily newspapers published in such county. If the petition be made by a corporation, a copy of the petition and notice of motion shall be filed with the secretary of state, and the proposed name shall thereupon be reserved for said corporation until six weeks after the date of such motion, and until six weeks after the date of any adjournment of such motion if notice of such adjournment shall be filed with the secretary of state, and no certificate of incorporation of a proposed corporation, having the same name as the name proposed in such petition, or a name so nearly resembling it as to be calculated to deceive, shall be filed in any office for the purpose of effecting its incorporation, and no corporation formed without the state of New York having the same name or a name so nearly resembling it as to be calculated to deceive shall be given authority to do business in this state.

Thus amended by chap. 110, Laws of 1904, taking effect September 1, 1904.

### Order.

§ 2414. If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, and, if the petitioner be a corporation, that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted, to be filed within ten

days thereafter in the clerk's office of the county in which the petitioner resides, if he be an individual, or in the office of the clerk of the city court of New York if the order be made by that court, or, if the petitioner be a corporation, in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed in which its principal office shall be located, or if it has no business office, in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and, if the petitioner be a corporation, that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of state; and also, if it be a banking corporation, in the office of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the office of the board of railroad commissioners. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof in a designated newspaper, in the county in which the order is directed to be entered, at least once if the petitioner be an individual, or if the petitioner be a corporation, once in each week for four successive weeks. The county clerk, in whose office an order changing the name of a corporation is entered, shall record the same at length in the book kept in his office for recording certificates of incorporation.

Thus amended by chap. 946, Laws of 1895.

#### When change to take effect.

§ 2415. If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is thereby authorized to be assumed,

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and by no other name. No proceedings heretofore had under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the code of civil procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

Thus amended by chap. 264, Laws of 1894.

### Substitution of new name in pending action or proceeding.

§ 2416. An action or special proceeding, civil or criminal, commenced by or against a person whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in the action or the party instituting the special proceeding, or the people, as the case requires, may, at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding.

Thus amended by Chap. 366, Laws of 1893.

### Reports by clerks to state officers.

§ 2417. The clerk of each county and of each court, shall annually, in the month of December, report to the secretary of state all changes of names of individuals or of corporations, which have been made in pursuance of orders filed in their respective offices during the past year and since the last previous report, and also report in like manner to the superintendent of banks all changes of the names of banking corporations, and to the superintendent of insurance all changes of names of corporations authorized to make insurances. The secretary of state must cause to be published, in the next volume of the session laws a tabular statement showing the original name of each person and corporation and the name which he or it has been authorized to assume.

Thus amended by Chap. 366, Laws of 1893.



# THE GENERAL CORPORATION LAW.

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## CHAP. 563, LAWS OF 1890.

*(Generally amended by Chap. 687, Laws of 1892.)*

AN ACT in relation to corporations, constituting chapter thirty-five of the general laws.

*(As amended to and including the session of the Legislature of 1905.)*

[SEE SECTIONS OF CODE OF CRIMINAL PROCEDURE AND PENAL CODE,  
THIS VOLUME.]

## CHAPTER XXXV OF THE GENERAL LAWS.

### THE GENERAL CORPORATION LAW.

- SECTION
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### Short title.

SECTION 1. This chapter shall be known as the general corporation law.

### Classification of corporations.

§ 2. A corporation shall be either,

1. A municipal corporation,
2. A stock corporation,
3. A non-stock corporation, or
4. A mixed corporation.

A stock corporation shall be either,

1. A moneyed corporation,
2. A transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either,

1. A religious corporation, or
2. A membership corporation.

A mixed corporation shall be either,

1. A cemetery corporation,
2. A library corporation,
3. A co-operative corporation.
4. A board of trade corporation, or
5. An agricultural and horticultural corporation.

A transportation corporation shall be either,

1. A railroad corporation, or
2. A transportation corporation other than a railroad corporation.

A membership corporation shall include benevolent orders and fire and soldiers' monument corporations.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

#### Definitions.

§ 3. 1. A municipal corporation includes a county, town, school district, village and city, and any other territorial division of the State established by law with powers of local government.

2. A stock corporation is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term non-stock corporation includes every corporation other than a stock corporation.

4. A moneyed corporation is a corporation formed under or subject to the banking or the insurance law.

5. A domestic corporation is a corporation incorporated by or under the laws of the State or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the code of civil procedure for the purpose of construing such code.

6. The term, directors, when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

7. The term, certificate of incorporation, shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term, member of a corporation, shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

9. The term, office of a corporation, means its principal office within the State or principal place of business within the State, if it has no principal office therein.

10. The term, business of a corporation, when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term, corporate law or laws, when used in any law forming a part of the revision of the general laws of the State of which this chapter is a part, means the general laws of this State relating to corporations included in such revision.

Thus amended by chap. 672, Laws of 1895.

### Qualifications of incorporators.

§ 4. A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds

of them must be citizens of the United States and one of them a resident of this State. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

Thus amended by chap. 672, Laws of 1895.

#### **Filing and recording certificates of incorporation.**

§ 5. Every certificate of incorporation including the corporate name or title and every amended or supplemental certificate, and every certificate which alters the provisions of any certificate of incorporation or any amended or supplemental certificate, hereafter executed shall be in the English language, and except of a religious, cemetery, moneyed, municipal or fire department corporation, shall be filed in the office of the secretary of state, and shall be by him duly recorded and indexed in books specially provided therefor, and a certified copy of such certificate or amended or supplemental certificate with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct. All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any corporate powers or privileges until such taxes and fees have been paid.

Thus amended by chap. 285, Laws of 1902.

#### **Corporate names.**

§ 6. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business

under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this state, with the word trust, bank, banking, insurance, assurance, indemnity, guarantee, guaranty, savings, investment, loan or benefit as part of its name, except a corporation formed under the banking law or the insurance law.

Thus amended by chap. 9, Laws of 1902.

#### Amended and supplemental certificates.

§ 7. If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exist, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the incorporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the attorney-general, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

See subdivision 13, section 2, also section 3, Railroad Law, also chap. 238, Laws 1893, *post*.

#### **Lost or destroyed certificates.**

§ 8. If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

#### **Certificate and other papers as evidence.**

§ 9. The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed or recorded relating to the incorporation of any corporation, or its existence or management, and containing facts required or authorized by law to be stated therein, shall be presumptive evidence of the existence of such facts.

Thus amended by chap. 672, Laws of 1895.

#### **Limitation of powers.**

§ 10. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given. The certificate of incorporation of any corporation may contain any provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors

and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

Thus amended by chap. 672, Laws of 1895.

### Grant of general powers.

§11. Every corporation as such has power, though not specified in the law under which it is incorporated:

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

2. To have a common seal, and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulations of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

Thus amended by chap. 672, Laws of 1895.



**Enlargement of limitations upon the amount of the property of non-stock corporations.**

§ 12. If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation other than a stock corporation may take or hold, such corporation may take and hold property of the value of three million dollars or less, or the yearly income derived from which shall be five hundred thousand dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

Thus amended by chap. 400, Laws of 1894.

**Acquisition of additional real property.**

§ 13. When any corporation shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

**Acquisition of property without the state.**

§ 14. Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business. Any domestic corporation establishing or maintaining a charitable, philanthropic or educational institution within this state may also carry on its work and establish or maintain one or more branches of such institution or an additional institution or additional institutions in any other state, the District of Columbia or in any part of the territories or dependencies of the United States of America or in any foreign country and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey or

otherwise dispose of such real and personal property without this state as may be requisite therefor. But nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws.

Thus amended by chap. 178, Laws of 1903.

### Certificate of authority of a foreign corporation.

§ 15. No foreign stock corporation other than a moneyed corporation, shall do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this state shall do business herein after December thirty-first, eighteen hundred and ninety-two, without having procured such certificate from the secretary of state, but any lawful contract previously made by the corporation may be performed and enforced within the state subsequent to such date. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corpora-

tion, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," or "benefit," as a part of its name.

Thus amended by chap. 490, Laws of 1904, see chap. 962, Laws of 1896, *post*.

#### **Proof to be filed before granting certificate.**

§ 16. Before granting such certificate the secretary of state shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the State, and a place within the State which is to be its principal place of business, and designating in the manner prescribed in the code of civil procedure a person upon whom process against the corporation may be served within the State. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the State. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this State. If the person so designated dies or removes from the place where the corporation has its principal place of business within the State, and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against it may be served within the State, the secretary of state may revoke the authority of the corporation to do business within the State, and process against the corporation in an action upon any liability incurred within this State before such revocation, may, after such death or removal, and before another designation is made, be served upon the secretary of state. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a

copy of such notice to such corporation if its address, or the address of any officer thereof, is known to him.

Thus amended by chap. 672, Laws of 1895.

#### **Acquisition of real property in this state by certain foreign corporations.**

§ 17. Any foreign corporation created under the laws of the United States, or of any state or territory thereof, and doing business in this state, may acquire such real property in this state as may be necessary for its corporate purposes in the transaction of its business in this state, and convey the same by deed or otherwise in the same manner as a domestic corporation.

#### **Acquisition by foreign corporation of real property in this state.**

§ 18. Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this state covered by or subject to such mortgage, judgment, decree or settlement, and may take by devise any real property situated within this state and hold the same for not exceeding five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise in the same manner as a domestic corporation.

Thus amended by chap. 136, Laws of 1894.

#### **Prohibition of banking powers.**

§ 19. No corporation except a corporation formed under or subject to the banking laws, shall by any implication of construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, or buying and selling bills of exchange, or shall issue bills, notes or other evidences of debt for circulation as money.

Thus amended by chap. 236, Laws of 1904.

**Qualification of members as voters.**

§ 20. Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by vote at any annual meeting, or at any special meeting duly called for such purpose, may prescribe a period, not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books of the corporation may be made. Except in cases of express trust, or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such pledger or to such actual owner of such stock, a proxy to vote thereon. The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April thirty, eighteen hundred and ninety-one, were entitled to the exercise of such right, may hereafter exercise such right according to the provision of this section. A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or persons shall act; every other stockholder, upon his request there-

for may, by a like agreement in writing also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions and privileges of such agreement; the certificates of stock so transferred shall be surrendered and cancelled and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours. No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or anything of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

Thus amended by chap. 355, Laws of 1901.

See section 2 of the amendatory act as to its effect.

### **Proxies.**

§ 21. Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

### Challenges.

§ 22. Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly received any promise or any sum of money or anything of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." Any person offering to vote as proxy for any other person shall present his proxy and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or anything of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meeting, or as a consideration therefor." The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

Thus amended by chap. 355, Laws of 1901.

See section 2 of the amendatory act as to its effect.

**Effect of failure to elect directors.**

§ 23. If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

See section 22, Stock Corporation Law, *post*.

**Mode of calling special election of directors.**

§ 24. If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

**Mode of conducting special elections of directors.**

§ 25. Such meeting shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied or cannot be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of



directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

**Qualification of voters and canvass of votes at special elections.**

§ 26. In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation, the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him, the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.

The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

**Powers of supreme court respecting elections.**

§ 27. The supreme court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation, or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way, hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

**Stay of proceedings in actions collusively brought.**

§ 28. If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce

any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any director, and the corporation has by his connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the supreme court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

§ 29. The affairs of every corporation shall be managed by its board of directors, at least one of whom shall be a resident of this state. Unless otherwise provided (by law) a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The members of a corporation may in by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of its number. Subject to the by-laws, if any adopted by members of a corporation, the directors may make necessary by-laws of the corporation.

Thus amended by chap. 737, Laws of 1904.

#### Directors as trustees in case of dissolution.

§ 30. Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders or members, to the extent of its property and effects that shall come into their hands.

**Forfeiture for non-user.**

§ 31. If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

**Extension of corporate existence.**

§ 32. Any domestic corporation at any time before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if not a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and shall be filed in the office of the secretary of state, and shall by him be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate, shall be filed and similarly recorded and indexed in the office of the clerk of the county wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificates of such corporation, if any,

in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate. If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized, pursuant to any law of this state, and that it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation is authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival. If a corporation formed under or subject to the banking law, such certificate shall not be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turnpike or bridge is located, approving of and authorizing such extension. If all the stock of a corporation other than a corporation formed under or subject to the banking law, or an insurance corporation, or a turnpike, plank-road or bridge corporation shall be lawfully owned by another stock cor-

poration entitled by law to take a surrender and merger thereof, the corporate existence of such corporation whose stock is so owned may be extended at any time for the term of the corporate existence of the possessor corporation, by filing in the office or offices in which the original certificate or certificates of incorporation of the first-mentioned corporation were filed a certificate of such extension executed by its president and secretary and by such corporation owning all the shares of its capital stock. Every corporation extending its corporate existence under this chapter or under any general law of the state shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to the incorporation of a corporation, for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such law. The certificate of incorporation of any corporation whose duration is limited by such certificate or by law, may require that the consent of stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

Thus amended by chap. 256, Laws of 1905.

### **Conflicting corporate laws.**

§ 33. If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate. If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized, pursuant to any law of this state, and that it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation is authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival. If a corporation formed under or subject to the banking law, such certificate shall not be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turnpike or bridge is located, approving of and authorizing such extension. If all the stock of a corporation other than a corporation formed under or subject to the banking law, or an insurance corporation, or a turnpike, plank-road or bridge corporation shall be lawfully owned by another stock cor-

poration entitled by law to take a surrender and merger thereof, the corporate existence of such corporation whose stock is so owned may be extended at any time for the term of the corporate existence of the possessor corporation, by filing in the office or offices in which the original certificate or certificates of incorporation of the first-mentioned corporation were filed a certificate of such extension executed by its president and secretary and by such corporation owning all the shares of its capital stock. Every corporation extending its corporate existence under this chapter or under any general law of the state shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to the incorporation of a corporation, for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such law. The certificate of incorporation of any corporation whose duration is limited by such certificate or by law, may require that the consent of stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

Thus amended by chap. 256, Laws of 1905.

### **Conflicting corporate laws.**

§ 33. If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

**Laws repealed.**

§ 34. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

**Saving clause.**

§ 35. The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to May 1, 1891, under or by virtue of any law so repealed, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such law had not been repealed. All actions and proceedings, civil or criminal, commenced under or by virtue of the laws so repealed, and pending on April 30, 1891, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law.

**Construction.**

§ 36. The provisions of this chapter, and of the stock corporation law, the railroad law, the transportation corporations law, and the business corporations law, so far as they are substantially the same as those of laws existing on April 30, 1891, shall be construed as a continuation of such laws modified or amended according to the language employed in this chapter, or in the stock corporation law, the railroad law, the transportation corporations law, or the business corporations law, and not as new enactments.

References in laws not repealed to provisions of laws incorporated into the general laws hereinbefore enumerated and repealed, shall be construed as applying to the provisions so incorporated.



Nothing in this chapter or in the other general laws hereinbefore specified shall be construed to amend or repeal any provision of the Criminal or Penal Code or to impair any right or liability which any existing corporation, its officers, directors, stockholders or creditors may have or be subject to or which any such corporation, other than a railroad corporation, had or was subject to on April 30, 1891, by virtue of any special act of the legislature creating such corporation or creating or defining any such right or liability, unless such special act is repealed by this chapter.

#### Law revived.

§ 37. Chapter three hundred of the laws of eighteen hundred and fifty-five, entitled "An act to incorporate the Baptist Historical Society of the city of New York," which was inadvertently repealed by the transportation corporations law, is revived and re-enacted, and shall be of the same force and effect as if it had not been repealed.

#### When notice or lapse of time unnecessary.

§ 38. Whenever under the provisions of any of the corporate laws a corporation is authorized to take any action after notice to its members or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements be waived in writing by every member of such corporation, or by his attorney thereunto authorized.

This section added by chap. 672, Laws of 1895.

#### As to acts of directors.

§ 39. Whenever, under the provisions of any of the corporate laws, a corporation is authorized to take any action by the agreement or action of its directors, managers or trustees, such agreement or action may be taken by such directors, regularly con-

vened as a board, and acting by a majority of a quorum, except when otherwise expressly required by law or the by-laws of the corporation and any such agreement shall be executed in behalf of the corporation by such officers as shall be designated by the board of directors, managers or trustees. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Except when otherwise required by law or the by-laws of the corporation, special meetings of the members of the corporation may be called in the same manner as the annual meeting thereof.

Thus amended by chap. 355, Laws of 1901.

See section 2 of the amendatory act as to its effect.

#### Alteration and repeal of charter.

§ 40. The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

This section added by chap. 672, Laws of 1895.

#### SCHEDULE OF LAWS REPEALED.

Revised Statutes.....Part I, chapter 18.....All.

LAWS OF	CHAPTER	SECTIONS
1811.....	67.....	All.
1815.....	47.....	All.
1815.....	202.....	All.
1816.....	58.....	All.
1817.....	223.....	All.
1818.....	67.....	All.
1819.....	102.....	All.
1821.....	14.....	All.
1822.....	213.....	All.
1836.....	284.....	All.
1836.....	316.....	All.

LAWS OF	CHAPTER	SECTIONS
1838.....	160.....	All.
1838.....	161.....	All.
1838.....	262.....	All.
1839.....	218.....	All.
1842.....	165.....	All.
1846.....	155.....	All.
1846.....	215.....	17, 18.
1847.....	100.....	3, 4.
1847.....	210.....	All.
1847.....	222.....	All.
1847.....	270.....	All.
1847.....	272.....	All.
1847.....	287.....	All.
1847.....	398.....	All.
1847.....	404.....	All.
1847.....	405.....	All.
1848.....	37.....	All.
1848.....	40.....	All.
1848.....	45.....	All.
1848.....	259.....	All.
1848.....	265.....	All.
1848.....	360.....	All.
1849.....	250.....	All.
1849.....	362.....	All.
1850.....	71.....	All.
1850.....	140.....	All.
1851.....	14.....	All.
1851.....	19.....	All.
1851.....	98.....	All.
1851.....	107.....	All.
1851.....	487.....	All.
1851.....	497.....	All.
1852.....	228.....	All.
1852.....	372.....	All.

LAWS OF	CHAPTER	SECTIONS
1853.....	53.....	All.
1853.....	117.....	All.
1853.....	124.....	All.
1853.....	135.....	All.
1853.....	245.....	All.
1853.....	333.....	All.
1853.....	471.....	1, 2, 4.
1853.....	481.....	All.
1853.....	502.....	All.
1853.....	626.....	All.
1854.....	3.....	All.
1854.....	87.....	All.
1854.....	140.....	All.
1854.....	201.....	All.
1854.....	232.....	All.
1854.....	269.....	All.
1854.....	282.....	All.
1854.....	312.....	All.
1855.....	301.....	All.
1855.....	302.....	All.
1855.....	390.....	All.
1855.....	478.....	All.
1855.....	485.....	All.
1855.....	495.....	All.
1855.....	546.....	All.
1855.....	559.....	All.
1856.....	65.....	All.
1857.....	29.....	All.
1857.....	83.....	All.
1857.....	185.....	All.
1857.....	202.....	All.
1857.....	262.....	All.
1857.....	444.....	All.
1857.....	546.....	All.

LAWS OF	CHAPTER	SECTIONS
1857.....	558.....	All.
1857.....	643.....	All.
1857.....	776.....	All.
1858.....	10.....	All.
1858.....	125.....	All.
1859.....	209.....	All.
1859.....	311.....	All.
1859.....	455.....	All.
1860.....	116.....	All.
1860.....	269.....	All.
1860.....	523.....	All.
1861.....	149.....	All.
1861.....	170.....	All.
1861.....	215.....	All.
1861.....	238.....	All.
1862.....	205.....	All.
1862.....	248.....	All.
1862.....	425.....	All.
1862.....	438.....	All.
1862.....	449.....	All.
1862.....	472.....	All.
1863.....	63.....	All.
1863.....	134.....	All.
1863.....	346.....	All.
1864.....	85.....	All.
1864.....	337.....	All.
1864.....	517.....	All.
1864.....	582.....	All.
1865.....	234.....	All.
1865.....	246.....	All.
1865.....	307.....	All.
1865.....	691.....	All.
1865.....	780.....	All.
1866.....	73.....	All.

LAWS OF	CHAPTER	SECTIONS
1866.....	259.....	All.
1866.....	322.....	All.
1866.....	371.....	All.
1866.....	697.....	All.
1866.....	780.....	All.
1866.....	799.....	All.
1866.....	838.....	All.
1867.....	12.....	All.
1867.....	49.....	All.
1867.....	248.....	All.
1867.....	254.....	All.
1867.....	419.....	All.
1867.....	480.....	All.
1867.....	509.....	All.
1867.....	775.....	All.
1867.....	906.....	All.
1867.....	937.....	All.
1867.....	960.....	All.
1867.....	974.....	All.
1868.....	253.....	All.
1868.....	290.....	All.
1868.....	573.....	All.
1868.....	781.....	All.
1869.....	234.....	All.
1869.....	237.....	All.
1869.....	605.....	All.
1869.....	706.....	All.
1869.....	844.....	All.
1869.....	917.....	All.
1870.....	124.....	All.
1870.....	135.....	All.
1870.....	322.....	All.
1870.....	443.....	All.
1870.....	568.....	All.

LAWS OF	CHAPTER	SECTIONS
1870.....	773.....	All.
1871.....	95.....	All.
1871.....	481.....	All.
1871.....	535.....	All.
1871.....	560.....	All.
1871.....	657.....	All.
1871.....	669.....	All.
1871.....	697.....	All.
1871.....	883.....	All.
1872.....	81.....	All.
1872.....	128.....	All.
1872.....	146.....	All.
1872.....	248.....	All.
1872.....	283.....	All.
1872.....	350.....	All.
1872.....	374.....	All.
1872.....	426.....	All.
1872.....	609.....	All.
1872.....	611.....	All.
1872.....	779.....	All.
1872.....	780.....	All.
1872.....	820.....	All except 20.
1872.....	829.....	All.
1872.....	843.....	All.
1873.....	151.....	All.
1873.....	352.....	All.
1873.....	432.....	All.
1873.....	440.....	All.
1873.....	469.....	All.
1873.....	616.....	All.
1873.....	710.....	All.
1873.....	737.....	All.
1873.....	814.....	All.
1874.....	76.....	All.

LAWS OF	CHAPTER	SECTIONS
1874.....	143.....	All.
1874.....	149.....	All.
1874.....	240.....	All.
1874.....	288.....	All.
1874.....	430.....	All.
1875.....	4.....	All.
1875.....	58.....	All.
1875.....	88.....	All.
1875.....	108.....	All.
1875.....	113.....	All.
1875.....	119.....	All.
1875.....	120.....	All.
1875.....	159.....	All.
1875.....	193.....	All.
1875.....	256.....	All.
1875.....	319.....	All.
1875.....	365.....	All.
1875.....	445.....	All.
1875.....	510.....	All.
1875.....	586.....	All.
1875.....	598.....	All.
1875.....	606.....	All.
1875.....	611.....	All.
1876.....	77.....	All.
1876.....	135.....	All.
1876.....	198.....	All.
1876.....	280.....	All.
1876.....	358.....	All.
1876.....	373.....	All.
1876.....	415.....	All.
1876.....	435.....	All.
1876.....	446.....	All.
1877.....	103.....	All.
1877.....	158.....	All.



LAWS OF	CHAPTER	SECTIONS
1877.....	164.....	All.
1877.....	171.....	All.
1877.....	224.....	All.
1877.....	266.....	All.
1877.....	374.....	All.
1878.....	61.....	All.
1878.....	121.....	All.
1878.....	163.....	All.
1878.....	203.....	All.
1878.....	210.....	All.
1878.....	261.....	All.
1878.....	264.....	All.
1878.....	316.....	All.
1878.....	334.....	All.
1878.....	394.....	All.
1879.....	214.....	All.
1879.....	253.....	All.
1879.....	290.....	All.
1879.....	293.....	All.
1879.....	350.....	All.
1879.....	377.....	All.
1879.....	393.....	All.
1879.....	395.....	All.
1879.....	413.....	All.
1879.....	415.....	All.
1879.....	441.....	All.
1879.....	503.....	All.
1879.....	505.....	All.
1879.....	512.....	All.
1879.....	541.....	All.
1880.....	5.....	All.
1880.....	85.....	All.
1880.....	90.....	All.
1880.....	94.....	All.
1880.....	113.....	All.

LAWS OF	CHAPTER	SECTIONS
1880.....	133.....	All.
1880.....	155.....	All.
1880.....	182.....	All.
1880.....	187.....	All.
1880.....	223.....	All.
1880.....	225.....	All.
1880.....	241.....	All.
1880.....	254.....	All.
1880.....	263.....	All.
1880.....	267.....	All.
1880.....	349.....	All.
1880.....	415.....	All.
1880.....	417.....	All.
1880.....	484.....	All.
1880.....	510.....	All.
1880.....	575.....	All.
1880.....	582.....	All.
1880.....	583.....	All.
1880.....	585.....	All.
1881.....	22.....	All.
1881.....	58.....	All.
1881.....	77.....	All.
1881.....	117.....	All.
1881.....	148.....	All.
1881.....	213.....	All.
1881.....	232.....	All.
1881.....	295.....	All.
1881.....	296.....	All.
1881.....	311.....	All.
1881.....	313.....	All.
1881.....	321.....	All.
1881.....	337.....	All.
1881.....	338.....	All.
1881.....	351.....	All.
1881.....	399.....	All.

LAWS OF	CHAPTER	SECTIONS
1881.....	422.....	All.
1881.....	464.....	All.
1881.....	468.....	All.
1881.....	470.....	All.
1881.....	472.....	All.
1881.....	485.....	All.
1881.....	551.....	All.
1881.....	589.....	All.
1881.....	649.....	All.
1881.....	650.....	All.
1881.....	674.....	All.
1881.....	685.....	All.
1882.....	73.....	All.
1882.....	82.....	All.
1882.....	140.....	All.
1882.....	273.....	All.
1882.....	289.....	All.
1882.....	290.....	All.
1882.....	306.....	All.
1882.....	309.....	All.
1882.....	349.....	All.
1882.....	353.....	All.
1882.....	393.....	All.
1882.....	405.....	All.
1883.....	46.....	All.
1883.....	71.....	All.
1883.....	102.....	All.
1883.....	216.....	All.
1883.....	232.....	All.
1883.....	237.....	All.
1883.....	238.....	All.
1883.....	240.....	All.
1883.....	287.....	All.
1883.....	323.....	All.
1883.....	361.....	All.

LAWS OF	CHAPTER	SECTIONS
1883.....	381.....	All.
1883.....	382.....	All.
1883.....	384.....	All.
1883.....	386.....	All.
1883.....	387.....	All.
1883.....	388.....	All.
1883.....	409.....	All.
1883.....	482.....	All.
1883.....	483.....	All.
1883.....	497.....	All.
1884.....	140.....	All.
1884.....	193.....	All.
1884.....	208.....	All.
1884.....	223.....	All.
1884.....	252.....	All.
1884.....	267.....	All.
1884.....	367.....	All.
1884.....	386.....	All.
1884.....	397.....	All.
1884.....	421.....	All.
1884.....	422.....	All.
1884.....	439.....	All.
1884.....	441.....	All.
1884.....	444.....	All.
1885.....	84.....	All.
1885.....	127.....	All.
1885.....	141.....	All.
1885.....	153.....	All.
1885.....	171.....	All.
1885.....	305.....	All.
1885.....	369.....	All.
1885.....	422.....	All.
1885.....	423.....	All.
1885.....	489.....	All.
1885.....	498.....	All.

LAWS OF	CHAPTER	SECTIONS
1885.....	535.....	All.
1885.....	540.....	All.
1885.....	549.....	All.
1886.....	65.....	All.
1886.....	182.....	All.
1886.....	271.....	All.
1886.....	321.....	All.
1886.....	322.....	All.
1886.....	403.....	All.
1886.....	415.....	All.
1886.....	509.....	All.
1886.....	551.....	All.
1886.....	579.....	All.
1886.....	586.....	All.
1886.....	592.....	All.
1886.....	601.....	All.
1886.....	605.....	All.
1886.....	634.....	All.
1886.....	642.....	All.
1887.....	450.....	All.
1887.....	486.....	All.
1887.....	536.....	All.
1887.....	570.....	All.
1887.....	616.....	All.
1887.....	622.....	All.
1887.....	724.....	All.
1888.....	189.....	All.
1888.....	306.....	All.
1888.....	313.....	All.
1888.....	359.....	All.
1888.....	394.....	All.
1888.....	447.....	All.
1888.....	462.....	All.
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1888.....	514.....	All.

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# THE STOCK CORPORATION LAW.

## CHAP. 564, LAWS OF 1890.

*(Generally amended by Chap. 688, Laws of 1892.)*

AN ACT in relation to stock corporations, constituting chapter thirty-six of the general laws.

(As amended to and including the session of the Legislature of 1905.)

[SEE SECTIONS OF CODE OF CRIMINAL PROCEDURE AND PENAL CODE,  
THIS VOLUME.]

## CHAPTER XXXVI OF THE GENERAL LAWS.

ARTICLE 1. General powers; reorganization. (§§ 1-8.)

2. Directors and officers; their election, duties and liabilities.  
(§§ 20-34.)

3. Stock; stockholders, their rights and liabilities. (§§ 40-62.)

### ARTICLE I.

#### GENERAL POWERS; REORGANIZATION.

SECTION 1. Short Title and application of chapter.

2. Power to borrow money and mortgage property.
3. Reorganization upon sale of corporate property and franchises.
4. Contents of plan or agreement.
5. Sale of property; possession of receiver and suits against him.
6. Municipalities may assent to plan of readjustment.
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- 8.

Short title and application of chapter.

SECTION 1. This chapter shall be known as the stock corporation law, but article one shall not apply to monied corporations.

Power to borrow money and mortgage property.

§ 2. In addition to the powers conferred by the general corporation law, every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights,

privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase money mortgages and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary, of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by like consent, the directors under such regulations as they may adopt, may confer on the holder of any debt or obligation whether secured, or unsecured, evidenced by bonds of the corporation the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the directors shall from time to time, authorize an increase of capital stock sufficient for that purpose by causing to be filed in the office of the secretary of state, and a duplicate thereof in the office of the clerk of the county where the principal place of business of the corporation shall be located, a certificate under the seal of the corporation, subscribed and acknowledged by the president and secretary of the corporation setting forth,

1. A copy of such mortgage; or resolution of directors authorizing the issue of such bonds.

2. That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such



mortgage or resolution of directors authorizing the issue of such bonds by such corporation;

3. A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock of the corporation necessary for the purpose of such conversion;

4. The amount of capital theretofore authorized, the proportion thereof actually issued and the amount of the increased capital stock;

If the corporation be a railroad corporation the certificate shall have endorsed thereon the approval of the board of railroad commissioners. When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased to the amount specified in such certificate.

Thus amended by chap. 745, Laws of 1905.

See sections 8, 44, 45, 46, Stock Corporation Law, subdivision 10, section 4, Railroad Law, *post*.

#### **Reorganization upon sale of corporate property and franchises.**

§ 3. When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser, his assignee or grantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes at least two-thirds of whom shall be citizens of the United States and one shall be a resident of this state, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired and the court by whose authority the sale had been made, with the date of the judgment or decree

authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of, and rights pertaining to, each class.

Thus amended by chap. 80, Laws of 1902.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office address of the directors for the first year. They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into as provided in section four of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation, last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended, and any and all incorporations based thereon are hereby ratified and confirmed.

Subdivision 3 thus amended by chap. 706, Laws of 1904.

#### Contents of plan or agreement.

§ 4. At or previous to the sale the purchasers thereat, or the person for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees and stockholders, or any of them, of the corporation owning such property and franchises at the time of sale, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by

the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders, and owners of any or all of the bonds of the corporation, foreclosed, or of the bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the state and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed in the aggregate, the maximum amount of stock mentioned in the certificate of incorporation.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

#### **Sale of property; possession of receiver and suits against him.**

§ 5. The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be com-

menaced against such receiver unless founded on willful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

See chap. 378, Laws 1883, chap. 285, Laws 1884, chap. 310, Laws 1886, chap. 522, Laws 1898, chap. 534, Laws 1898, chap. 404, Laws 1902, section 76 Railroad Law, and section 8, Labor Law, *post*.

### Municipalities may assent to plan of readjustment.

§ 6. The commissioners, corporate authorities or proper officers of any city, town or village, who may hold stock in any corporation, the property and franchises whereof, shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

See town bonding acts, *post*.

### Combinations abolished.

§ 7. No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

Thus amended by chap. 384, Laws of 1897.

See chap. 962, Laws 1896, and chap. 690, Laws 1899, *post*.

§ 8. Whenever any mortgage affecting property or franchises within this state heretofore or hereafter executed by authority of the board of directors in behalf of any stock corporation, domestic or foreign, of any description, recites or represents in substance or effect that the execution of such mortgage has been duly consented to, or authorized by stockholders, such recital or representation in any such mortgage, after public record thereof within this state, shall be presumptive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law. After any such mortgage heretofore or hereafter shall have been publicly recorded for more than one year in one or more of the counties of this state containing the mortgaged premises or any part thereof, and the corporation shall have received value for bonds actually issued under and secured by such mortgage, and interest shall have been paid on any of such bonds according to the terms thereof, such recital or representation of such mortgage so recorded shall be conclusive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law, and its validity shall not be impaired by reason of any defect or insufficiency of consent or authority of stockholders or in filing or recording such consent or authority, and such mortgage shall be valid and binding upon the corporation, and those claiming under it, as security for all valid bonds issued or to be issued thereunder, unless such mortgage shall be adjudged invalid in an action begun as hereinafter, in this section, provided. Notwithstanding the foregoing provisions of this section, the invalidity of any such mortgage heretofore recorded because of insufficiency of consent by stockholders may be adjudged in any action for such purpose begun before the first day of April, nineteen hundred and two, and the invalidity of any such mortgage hereafter recorded, because of insufficiency of consent by stockholders, may be adjudged in any action for such purpose begun, within one year after the earliest record of such mortgage in any county in this state, provided in either case that such action shall have been so begun by or in behalf of the corporation by

direction of the board of directors acting in their own discretion, or upon the written request of the holders of not less than one-third of the capital stock of the corporation; and in any such action so begun by or in behalf of the corporation, the recitals or representations of the mortgage shall be presumptive evidence only as first above provided. Whenever hereafter, in compliance with any law of this state, the officers of any corporation shall have made and filed and recorded a certificate that the execution of a mortgage hereafter made by the corporation has been duly consented to by stockholders, such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase, for value, any bond or obligation purporting to be secured by such mortgage, at any time when said certificate shall remain of record and uncanceled. Nothing in this section contained shall affect any right or any remedy in respect of any such right of any creditor accrued before this enactment nor shall it dispense with the necessity of obtaining the consent of the board of railroad commissioners to any mortgage by a railroad corporation.

Added by chap. 354, Laws of 1901.

See section 5, said chapter.

## ARTICLE II.

### DIRECTORS AND OFFICERS; THEIR ELECTION, DUTIES AND LIABILITIES.

#### SECTION 20. Directors.

21. Change of number of directors.
22. When acts of directors void.
23. Liability of directors for making unauthorized dividends.
24. (Repealed.)
25. Liability of directors for loans to stockholders.
26. Transfers of stock by stockholders indebted to corporation.
27. Officers.
28. Inspectors and their oath.
29. Books to be kept.
30. Annual report to secretary of state.
31. Liability of officers for false certificates, reports or public notices.
32. Alterations or extension of business.
33. Sale of franchise and property.
- 34.

**Directors.**

§ 20. The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policy holders of an insurance corporation shall be eligible to election as directors. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

See chap. 317, Laws of 1881, *post*.

**Change of number of directors.**

§ 21. The number of directors of any stock corporation may be increased or reduced, but not below the minimum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified, the unanimous consent of the stock-

holders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the custodian of the stock book of such corporation stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase.

Thus amended by chap. 750, Laws of 1905.

#### **When acts of directors void.**

§ 22. When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

See section 23 of General Corporation Law, *ante*.



**Liability of directors for making unauthorized dividends.**

§ 23. The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

Section 24 repealed by chap. 354, Laws of 1901.

**Liability of directors for loans to stockholders.**

§ 25. No loan of moneys shall be made by any stock corporation, except a monied corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any installment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision

of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

See sections of Penal Code as to certain penalties, *post*.

#### Transfers of stock by stockholder indebted to corporation.

§ 26. If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

#### Officers.

§ 27. The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employes, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employe to give security for the faithful performance of his duties, and may remove him at pleasure. The policy holders of an insurance corporation shall be eligible to election or appointment as its officers.

#### Inspectors and their oath.

§ 28. The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a monied corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a

reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

**Books to be kept.**

§ 29. Every stock corporation shall keep at its office, correct books of account of all its business and transactions, and a book to be known as the stock-book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock-book of every such corporation shall be open daily, during at least three business hours for the inspection of its stockholders and judgment creditors, who may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as here-

in required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

See 106 App. Div. 349.

#### Annual report to secretary of state.

§ 30. Every domestic stock corporation and every foreign stock corporation doing business within this state, except moneyed and railroad corporations, shall annually during the month of January, or, if doing business without the United States, before the first day of May, may make a report as of the first day of January, which will state:

1. The amount of its capital stock and the proportion actually issued.
2. The amount of its debts or an amount which they do not exceed.
3. The amount of its assets or an amount which its assets at least equal.
4. The names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the code of civil procedure, as a person upon whom process against the corporation may be served within this state.

Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the secretary of state. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or

by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.

Thus amended by chap. 415, Laws of 1905, taking effect September 1, 1905.  
See chap. 690; Laws of 1899, *post*.

**Liability of officers for false certificates, reports or public notices.**

§ 31. If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or of the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

**Alterations or extension of business.**

§ 32. Any stock corporation heretofore or hereafter organized under any general or special law of this state may alter its certificate of incorporation so as to include therein any purposes, powers or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificates of incorporation of a corporation organized under any general law of this state for a business of the same general character, by filing

in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section forty-five of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

Thus amended by chap. 751, Laws of 1905.

### **Sale of franchise and property.**

§ 33. A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the state of New York, may with the consent of the holders of ninety-five per centum of its capital stock, sell and convey its property situate without the state of New York, not including its franchises to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property and franchises thereby transferred, and in case of a sale to a foreign corporation the property sold in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting. If any stock-

holder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

Thus amended by chap. 130, Laws of 1901.

Not to affect any action or proceeding commenced before chapter 130 became a law.

§ 34. No director or officer of any stock corporation shall be liable to any creditor of the corporation, because of the creation of any excessive indebtedness, or because of any failure to make or to file an annual report, whether heretofore or hereafter occurring;

(1) In case of any debt, as to which personal liability of directors or officers may be or shall have been waived by such creditor, or by anyone under whom he claims; or by any provision of any instrument creating or securing such debt: or

(2) Unless within three years after the occurrence of the act or the default in respect of which it shall be sought to charge the director or officer, such creditor shall have served upon such director or officer written notice of his intention to hold him personally liable for his claim; provided, nevertheless, that any such liability, because of any such default now existing and not waived as above provided, may be enforced by action begun at any time within the year eighteen hundred and ninety-nine or by action begun thereafter, if within such year written notice of intention to enforce such liability shall have been given as above provided.

Any director or officer, who, because of any such existing or future liability, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporate property, but not against the stockholders of the corporation; and also shall be entitled to contribution from all other directors and officers of the corporation similarly liable for the same debt, and the personal representatives of any such director or officer who shall have died before making such contribution.

This section added by chap. 354, Laws of 1899.

See other statutes in this book as to liability of directors or officers.

### ARTICLE III.

#### STOCK; STOCKHOLDERS, THEIR RIGHTS AND LIABILITIES.

##### SECTION 40.

41. Subscriptions to stock.
42. Consideration for issue of stock and bonds.
43. Time of payment of subscriptions to stock.
44. Increase or reduction of capital stock.
45. Notice of meeting to increase or reduce capital stock.
46. Conduct of such meeting; certificate of increase or reduction.
47. Preferred and common stock.
48. Prohibited transfers to officers or stockholders.
49. (Repealed.)
50. Application to court to order issue of new in place of lost certificate of stock.
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**SECTION 54. Liabilities of stockholders.**

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§ 40. The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in. Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and

exercise in respect thereof, all the rights, powers and privileges of individual owners or holders of such stock. Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last known post-office, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

Thus amended by chap. 601, Laws of 1902.

### **Subscriptions to stock.**

§ 41. If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places, and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

### **Consideration for issue of stock and bonds.**

§ 42. No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use

and lawful purposes of such corporation. Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation, by law required to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported as issued for property purchased.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

#### Time of payment of subscriptions to stock.

§ 43. Subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the board of directors may by resolution require. If default shall be made in the payment of any installment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally or by mail directed to him at his last known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum re-

quired by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such installments as the receiver or the court may direct.

#### **Increase or reduction of capital stock.**

§ 44. Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

#### **Notice of meeting to increase or reduce capital stock.**

§ 45. Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of the secretary of state and in the office of the clerk of the county in which the principal busi-

ness office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by the president or a vice president and the secretary, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last-known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

#### **Conduct of such meeting; certificate of increase or reduction.**

§ 46. If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous consent of stockholders expressed in writing signed by them or their duly authorized proxies, a certificate of the proceeding showing a compliance with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the secretary of state. In case of a reduction of the capital stock, except of

a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders as the case may be, shall have indorsed thereon the approval of the board of railroad commissioners, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro rata, at such times and in such manner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment.

Thus amended by chap. 123, Laws of 1904.

### Preferred and common stock.

§ 47. Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so provides, or by the consent of the holders of record of two-thirds of the capital stock, given

at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or a vice-president, and by the secretary or assistant secretary, of the corporation, shall be filed and recorded in the offices where the original certificate of incorporation of such corporation was filed and recorded; and the corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share but the total amount of such capital stock shall not be increased thereby.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

#### Prohibited transfers to officers or stockholders.

§ 48. No corporation which shall have refused to pay any of its notes or other obligations, when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation shall be valid, except that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited

act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void. No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valuable consideration without notice. Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

See section 54, Stock Corporation Law, section 30 Railroad Law, chap. 392, Laws of 1875, section 8, Labor Law, chaps. 418 and 419, Laws of 1897, *post*.

Section 49 repealed by chap. 354, Laws of 1901.

**Application to court to order issue of new in place of lost certificate of stock.**

§ 50. The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application



shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

#### Order of court upon such application.

§ 51. Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; but such provision requiring security to be deposited or bond filed is to be construed as excluding an application made by a domestic municipal corporation or by a public officer in behalf of such corporation; and the court may direct the publica-

tion of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, but in any application under the provisions of this act in which a domestic municipal corporation or a public officer in behalf of such corporation, shall be by the foregoing provisions of this section, excused from depositing security or filing a bond, such municipal corporation shall be liable for all damages that may be sustained by any person, in the same case and to the same extent as sureties to a bond or undertaking would have been, if such a bond or undertaking had been filed; and the corporation issuing such certificate, shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

Thus amended by chap. 35, Laws of 1905.

#### **Financial statement to stockholders.**

§ 52. Stockholders owning five per centum of the capital stock of any corporation other than a monied corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of

this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

#### Stock books of foreign corporations.

§ 53. Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, and any officer of the state authorized by law to investigate the affairs of any such corporation. If any such foreign stock corporation has in this state a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of two hundred and fifty dollars to be recovered by the person to whom such refusal was made.

Thus amended by chap. 384, Laws of 1897.

See chap. 690, Laws of 1899, *post*.

#### Liabilities of stockholders.

§ 54. Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders

of any existing corporation, under any general or special law, (excepting laws relating to moneyed corporations, and corporations and associations for banking purposes,) on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law. The stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employes other than contractors, for services performed by them for such corporation. Before such laborer, servant or employe shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services. No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

See chap. 392, Laws of 1875, *post*; chaps. 418 and 419, Laws of 1897; section 8, Labor Law, *post*; section 30, Railroad Law, *post*; see next section.

**Limitation of stockholder's liability.**

§ 55. No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

**Increase or reduction of number of shares.**

§ 56. The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates, for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation.

Thus amended by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

**Voluntary dissolution.**

§ 57. Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows: The board of directors of any such corporation may at a meeting called for that purpose upon, at least, three days' notice

to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meeting of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held, not less than thirty nor more than sixty days after the adoption of such resolution, and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceding the time appointed for holding such meeting, and on or before the day of the first publication of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last known post-office address. Such meeting shall be held in the city, town or village in which the last preceding annual meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting is published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then, such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice president, together with the powers of attorney signed by such stockholders executing such consent by attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the secretary of state. The secretary of state shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this section in order to be dissolved, and one of

such duplicate certificates shall be filed by such corporation in the office of the clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance of assets among the stockholders of said corporation, according to their respective rights and interest. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up. After paying or adequately providing for the debts and obligations of the corporation the directors may, with the written consent of the holders of two-thirds in amount of the capital stock, sell the remaining assets or any part thereof to a corporation organized under the laws of this state or any other state, and engaged in a business of the same general character, and take in payment therefor the stock or bonds or both of such corporation and distribute them among the stockholders, in lieu of money, in proportion to their interest therein, but no such sale shall be valid as against any stockholder, who, within sixty days after the mailing of notice to him of such sale shall apply to the supreme court in the manner provided by section thirty-three of this act, for an appraisal of the value of his interest in the assets so sold; unless

within thirty days after such appraisal the stockholders consenting to such sale, or some of them, shall pay to such objecting stockholder or deposit for his account, in the manner directed by the court, the amount of such appraisal and upon such payment or deposit the interest of such objecting stockholder shall vest in the person or persons making such payment or deposit.

Thus amended by chap. 760, Laws of 1900.

§ 58. Any domestic stock corporation and any foreign stock corporation authorized to do business in this state lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

Thus amended by chap. 98, Laws of 1902.

### Change of place of business.

§ 59. Any stock corporation now existing or hereafter organized under the laws of this state, except moneyed corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or to which it may have been changed under the provisions of this section, to any other city, town or county in this state, in which it may desire to actually transact and carry on



its regular business from day to day, provided, and\* such change has been authorized, either by unanimous consent of the stockholders expressed in writing and duly acknowledged and filed in the office of the secretary of state, or by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose. When such change shall be authorized by the stockholders as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the secretary of state and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate.

Thus amended by chap. 489, Laws of 1905.

#### Liabilities of officers, directors and stockholders of foreign corporations.

§ 60. Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except moneyed and railroad cor-

\*So in the original.

porations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends;
2. The creation of unauthorized and excessive indebtedness;
3. Unlawful loans to stockholders;
4. Making false certificates, reports or public notices;
5. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened;
6. The failure to file an annual report.

Such liabilities may be enforced in the courts of this state, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations.

This section added by chap. 384, Laws of 1897.

See chap. 690, Laws of 1899, *post*.

See sections of Penal Code as to certain penalties, *post*.

#### Dissolution by incorporators.

§ 61. The incorporators named in any certificate of incorporation filed for the purpose of creating a domestic stock corporation, other than a moneyed or transportation corporation, may, before the payment of any part of the capital, and before beginning business, surrender all corporate rights and franchises, by signing, verifying and filing in the office of the secretary of state and the clerk of the county where the certificate of incorporation is filed, a certificate setting forth that no part of the capital has been paid, that there are no liabilities, that such business has not been begun, and surrendering all rights and franchises; and proof of the facts set forth in such certificate to the satisfaction of the secretary of state; and thereupon the said corporation shall be dissolved, and its corporate existence and powers shall cease.

This section added by chap. 206, Laws of 1904.

**Partly paid stock.**

§ 62. The original or the amended certificate of incorporation of any stock corporation may contain a provision expressly authorizing the issue of the whole or of any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate issued to represent such stock, the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock, and for the payment of indebtedness to employees pursuant to sections fifty-four and fifty-five of this chapter; and in any such case, the corporation may declare and may pay dividends upon the basis of the amount actually paid upon the respective shares of stock instead of upon the par value thereof.

This section added by chap. 354, Laws of 1901.

See section 5 of the amendatory act as to its effect.

# THE RAILROAD LAW.

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## CHAP. 565, LAWS OF 1890.

AN ACT in relation to railroads, constituting chapter thirty-nine of the general laws.

(As amended to and including the session of the Legislature of 1905.)

[SEE SECTIONS OF CODE OF CRIMINAL PROCEDURE AND PENAL CODE, THIS VOLUME.]

## CHAPTER XXXIX OF THE GENERAL LAWS.

### THE RAILROAD LAW.

- ARTICLE 1. Organization; general powers; location. (§§ 1-23.)
2. Construction; operation; management. (§§ 30-69.)
  3. Consolidation; lease; sale; reorganization. (§§ 70-84.)
  4. Street surface railroads. (§§ 90-112.)
  5. Other railroads in cities and counties. (§§ 120-142.)
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### ARTICLE I.

#### ORGANIZATION, GENERAL POWERS, LOCATION.

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### Short title.

**SECTION 1.** This chapter shall be known as the railroad law.

### Incorporation.

\*§ 2. Fifteen or more persons may become a corporation, for the purpose (1) of buidng, maintaining and operating a railroad, or (2) of maintaining and operating a railroad already built, not owned by a railroad corporation, or for both purposes, or (3) of building, maintaining and operating a railroad for use by way of extension or branch or cut-off of any railroad then existing, or for shortening or straightening or improving the line or grade of such railroad or of any part thereof, by executing, acknowledging and filing a certificate, in which shall be stated:

1. The name of the corporation.
2. The number of years it is to continue.
3. The kind of road to be built or operated.
4. Its length and termini.

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\*The first paragraph of section 2 thus amended by chap. 727, Laws of 1905.

5. The name of each county in which any part of it is to be located.

6. The amount of capital stock, which shall not be less than ten thousand dollars for every mile of road built, or proposed to be built, except a narrow-gauge road, when it shall not be less than three thousand dollars for every such mile.

7. The number of shares into which the capital stock is to be divided.

8. If the capital stock is to consist of common and preferred stock, the amount of each class and the rights and privileges of the latter over the former.

9. The names and post-office addresses of the directors of the corporation, not less than nine, who shall manage its affairs for the first year.

10. The place where its principal office is to be located.

11. If a street surface railroad, the names and description of the streets, avenues and highways in which the road is to be constructed.

12. If it is to be a railway corporation, specified in article five of this chapter, the statements required by that article to be inserted in the certificate of incorporation.

13. The name and post-office address of each subscriber to the certificate and the number of shares of stock he agrees to take.

Such certificate shall have indorsed thereon, or annexed thereto, to be taken as a part thereof, an affidavit of at least three of such directors, that at least ten per cent of the minimum amount of capital stock authorized by law has been subscribed thereto, and paid in good faith and in cash to the directors named in the certificate, and that it is intended in good faith to build, maintain and operate the road mentioned therein. In case of a railway corporation specified in article five of this chapter, the affidavit of the directors shall show that the full amount of such capital stock has been in good faith subscribed, and there shall be annexed to the certificate of incorporation and as a part thereof the certificate of the railroad commissioners showing the

organization of the corporation for the purposes mentioned in the certificate.

The filing of every certificate, where the amount of stock required by this section has not been in good faith subscribed and paid in cash, shall be void.

Thus amended by chap. 676, Laws of 1892.

See section 7, General Corporation Law, *ante*, section 3 Railroad Law, *post*, chap. 238, Laws of 1893, *post*.

#### Supplemental certificate.

§ 3. If the names and places of residence of the directors of the corporation have been omitted from the certificate, when executed and acknowledged, and thereafter the requisite number of directors has been chosen at a meeting of the subscribers to the certificate, a supplemental certificate, containing their names and places of residence, may be filed with such certificate with the same force and effect as if the names and places of residence of the directors had been originally inserted therein.

See section 7, General Corporation Law, section 2, Railroad Law, *ante*; chap. 238, Laws of 1893, *post*.

#### Additional powers conferred.

§ 4. Subject to the limitations and requirements of this chapter, every railroad corporation, in addition to the powers given by the general and stock corporation laws, shall have power.

#### Entry upon lands for purposes of survey.

1. To cause the necessary examination and survey for its proposed railroad to be made for the selection of the most advantageous route; and for such purpose, by its officers, agents or servants, to enter upon any lands or waters subject to liability to the owner for all damages done.

#### Acquisition of real property.

2. To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad; and to acquire by condemnation such real estate and property as may be neces-

sary for such construction, maintenance and accommodation in the manner provided by law, but the real property acquired by condemnation shall be held and used only for the purposes of the corporation during the continuance of the corporate existence.

#### **Construction of road.**

3. To lay out its road not exceeding six rods in width, and to construct the same; and, for the purpose of cuttings and embankments, to take such additional lands as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road, upon making compensation therefor.

#### **Intersection of streams, highways, plank-roads, turnpikes and canals.**

4. To construct its road across, along or upon any stream, water-course, highway, plank-road, turnpike, or across any of the canals of the state, which the route of its road shall intersect or touch.

#### **Intersection of other railroads.**

5. To cross, intersect, join, or unite its railroad with any other railroad before constructed, at any point on its route and upon the ground of such other railroad corporation, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of its connections.

See section 12, Railroad Law, *post*.

#### **Buildings and stations.**

6. To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

#### **Transportation of persons and property.**

7. To take and convey persons and property on its railroad by the power or force of steam or of animals, or by any mechani-



cal power, except where such power is specially prescribed in this chapter and to receive compensation therefor.

#### **Time and manner of transportation.**

8. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

#### **Purchase of lands and stock in other states.**

9. To acquire and dispose of any real property in any other state through which any part of its railroad is operated, and stock in any foreign corporation owning lands in another state for the purpose of securing for such railroad corporation in this state a permanent supply of fuel for its use, and stock of corporations in this state, formed for the purpose of erecting union railway depots.

#### **Creation of Mortgage.**

10. From time to time to borrow such sums of money as may be necessary for completing and finishing or operating or improving its railroad, or for any other of its lawful purposes and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its property and franchises to secure the payment of any debts contracted by the company for the purposes aforesaid, notwithstanding any limitation on such power contained in any general or special law. But no mortgage, except purchase-money mortgages, shall be issued by any railroad corporation under this or any other law without the consent of the board of railroad commissioners, and the consent of the stockholders owning at least two-thirds of the stock of the corporation, which consent shall be in writing, and shall be given and certified and be filed and recorded in the office of the clerk or register of the county where it has its principal place of business, as provided in section two of the stock corporation law; or else the consent of the board of railroad commissioners and the consent by their votes of stockholders owning at least two-thirds of the stock of the corporation which is represented and voted upon in person or by proxy at a meeting called for that purpose upon a notice

stating the time, place and object of the meeting, served at least three weeks previously upon each stockholder personally, or mailed to him at his post-office address, and also published at least once a week for three weeks successively in some newspaper printed in the city, town or county where such corporation has its principal office, and a certificate of the vote at such meeting shall be signed and sworn to and shall be filed and recorded as provided by section two of the stock corporation law. When authorized by the stockholders consent to any bonds made or issued under this section, the directors, under such regulations as they may adopt, may confer on the holder of any such bonds the right to convert the principal thereof, after two and not more than twelve years from the date of the bond, into stock of the corporation at a price fixed by the board of directors, which may be either par or a price not less than the market value thereof at the date of such consent to such bonds; and if the capital stock shall not be sufficient to meet the conversion when made, the board of directors shall authorize an increase of capital stock sufficient for that purpose.

Subdivision 10 thus amended by chap. 504, Laws of 1902.

See sections 2 and 8, Stock Corporation Law, *ante*.

#### When corporate powers to cease.

§ 5. If any domestic railroad corporation shall not, within five years after its certificate of incorporation is filed, begin the construction of its road and expend thereon ten per centum of the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing such certificate, its corporate existence and powers shall cease. But if any such steam railroad corporation whose certificate of incorporation was filed since the year eighteen hundred and eighty, and whose road as designated in such certificate is wholly within one county and not more than ten miles in length, has acquired the real property necessary for its road-bed by purchase, its corporate existence and powers shall not be deemed to have ceased because of its failure to comply with the provisions of this article; and the time for beginning the construction of its road and expend-

ing thereon ten per centum of its capital, is extended until thirteen years from the date of the filing of such certificate and the time for finishing its road and putting it in operation, is extended until eighteen years from the date of such filing. This section shall not apply to any street surface railroad company incorporated prior to July first, eighteen hundred and ninety-five, which has obtained or become the owner of the consents of the local authorities, of any city of the first or second class, given under article four of the railroad law to the use of public streets, avenues or highways for the construction and operation of the railroad thereon.

Thus amended by chap. 508, Laws of 1901.

See other laws as to expiration of time to construct, *post*.

See 106 App. Div. 240.

See section 99, Railroad Law, *post*.

#### Location of route.

§ 6. Every railroad corporation, except a street surface railroad corporation and an elevated railway corporation, before constructing any part of its road in any county named in its certificate of incorporation, or instituting any proceedings for the condemnation of real property therein, shall make a map and profile of the route adopted by it in such county, certified by the president and engineer of the corporation, or a majority of the directors, and file it in the office of the clerk of the county in which the road is to be made. The corporation shall give written notice to all actual occupants of the lands over which the route of the road is so designated, and which has not been purchased by or given to it, of the time and place such map or profile were filed, and that such route passes over the lands of such occupants. Any such occupant or the owner of the land aggrieved by the proposed location, may, within fifteen days after receiving such notice, give ten days' written notice to such corporation and to the owners or occupants of lands to be affected by any proposed alteration, of the time and place of an application to a justice of the supreme court, in the judicial district where the lands are situated, by petition duly verified, for the appointment of commissioners to examine the route.

The petition shall state the objections to the route designated, shall designate the route to which it is proposed to alter the same, and shall be accompanied with a survey, map and profile of the route designated by the corporation, and of the proposed alteration thereof, and copies thereof shall be served upon the corporation and such owners or occupants with the notice of the application. The justice may, upon the hearing of the application, appoint three disinterested persons, one of whom must be a practical civil engineer, commissioners to examine the route proposed by the corporation, and the route to which it is proposed to alter the same, and after hearing the parties, to affirm the route originally designated, or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of lands upon the proposed alterations; but no alteration of the route shall be made except by the concurrence of the commissioner who is a practical civil engineer, nor which will cause greater damage or injury to lands or materially greater length of road than the route designated by the corporation, nor which shall substantially change the general line adopted by the corporation.

The commissioners shall, within thirty days after their appointment, make and certify their written determination, which with the petition, map, survey and profile, and any testimony taken before them shall be immediately filed in the office of the county clerk of the county. Within twenty days after such filing, any party may, by written notice to the other, appeal to the general term of the supreme court from the decision of the commissioners, which appeal shall be heard and decided at the next term held in the department in which the lands of the petitioners or any of them are situated, for which the same can be noticed, according to the rules and practice of the court. On the hearing of such appeal, the court may affirm the route proposed by the corporation or may adopt that proposed by the petitioner.

The commissioners shall each be entitled to six dollars per day for their services, and to their reasonable and necessary expenses, to be paid by the persons who applied for their ap-

pointment. If the route of the road, as designated by the corporation, is altered by the commissioners, or by the order of the court, the corporation shall refund to the petitioner the amount so paid, unless the decision of the commissioners is reversed upon appeal taken by the corporation. No such corporation shall institute any proceedings for the condemnation of real property in any county until after the expiration of fifteen days from the service by it of the notice required by this section. Every such corporation shall transmit to the board of railroad commissioners the following maps, profiles and drawings exhibiting the characteristics of their road, to wit:

A map or maps showing the length and direction of each straight line; the length and radius of each curve; the point of crossing of each town and county line, and the length of line of each town and county accurately determined by measurements to be taken after the completion of the road.

Whenever any part of the road is completed and used, such maps and profiles of such completed part shall be filed with such board within three months after the completion of any such portion and the commencement of its operation; and when any additional portion of the road shall be completed and used, other maps shall be filed within the same period of time, showing the additional parts so completed. If the route, as located upon the map and profile filed in the office of any county clerk, shall have been changed, it shall also cause a copy of the map and profile filed in the office of the railroad commissioners, so far as it may relate to the location in such county, to be filed in the office of the county clerk.

Thus amended by chap. 676, Laws of 1892.

**Acquisition of title to real property; additions, betterments and facilities.**

\*§ 7. All real property, required by any railroad corporation for the purpose of its incorporation or for any purpose stated in the railroad law, shall be deemed to be required for a public use, and may be acquired by such corporation. If the corporation is unable to agree for the purchase of any such real property, or of any right, interest or easement therein, required for

any such purpose, or if the owner thereof shall be incapable of selling the same, or if after diligent search and inquiry the name and residence of any such owner cannot be ascertained, it shall have the right to acquire title thereto by condemnation. Every railroad corporation shall have the power from time to time to make and use upon or in connection with any railroad either owned or operated by it, such additions, betterments and facilities as may be necessary or convenient for the better management, maintenance or operation of any such railroad, and shall have the right by purchase or by condemnation, to acquire any real property required therefor, and it shall also have the right of condemnation in the following additional cases:

1. Where title to real property has been acquired, or attempted to be acquired, and has been found to be invalid or defective.

2. Where its railroad shall be lawfully in possession of a lessee, mortgagee, trustee or receiver, and additional real property shall be required for the purpose of running or operating such railroad.

- \*3. Where it shall require for any railroad owned or operated by it any further rights to lands or the use of lands for additional main tracks or for branches, sidings, switches, or turn-outs or for connections or for cut-offs or for shortening or straightening or improving the line or grade of its road or any part thereof. Also where it shall require any further rights to lands or the use of lands for filling any structures of its road, or for constructing, widening or completing any of its embankments or roadbeds, by means of which greater safety or permanency may be secured, and such lands shall be contiguous to such railroad and reasonably accessible.

4. Where it shall require any further right to lands or to the use of lands for the flow of water occasioned by railroad embankments or structures now in use, or hereafter rendered necessary, or for any other purpose necessary for the operation of such railroad, or for any right to take and convey water from any spring, pond, creek or river to such railroad, for the

uses and purposes thereof, together with the right to build or lay aqueducts or pipes for the purpose of conveying such water, and to take up, relay and repair the same, or for any right of way required for carrying away or diverting any water, stream or floods from such railroad for the purpose of protecting its road or for the purpose of preventing any embankment, excavation or structure of such railroad from injuring the property of any person who may be rendered liable to injury thereby.

Waters commonly used for domestic, agricultural or manufacturing purposes, shall not be taken by condemnation to such an extent as to injuriously interfere with such use in future. No railroad corporation shall have the right to acquire by condemnation any right or easement in or to any real property owned or occupied by any other railroad corporation, except the right to intersect or cross the tracks and lands owned or held for right of way by such other corporation, without appropriating or affecting any lands owned or held for depots or gravel-beds.

Thus amended by chap. 676, Laws of 1892, and chap. 727, Laws of 1905.

\*The first paragraph and subdivision 3 of section 7 thus amended by chap. 727, Laws of 1905.

See section 4 of this law.

As to condemnation by street railroads, see section 90 and section 4, and this section of this law.

As to condemning railroad property, see section 3370, Condemnation Law, *ante*.

### **Railroads through public lands.**

§ 8. The commissioners of the land office may grant to any domestic railroad corporation land belonging to the people of the state, except the reservation at Niagara and the Concourse lands on Coney Island, which may be required for the purpose of its road on such terms as may be agreed upon by them; or such corporation may acquire title thereto by condemnation; and the county or town officers having charge of any land belonging to any county or town, required for such corporation for the purposes of its road, may grant such land to the corporation for such compensation as may be agreed upon. In case the land or any right, interest or easement therein, required by such railroad corporation is used for prison purposes the commissioners of the land

office may grant such land, or any right, interest or easement therein, provided the plans of such railroad corporation for the use of such prison lands, or such right, interest or easement therein, have the approval of the superintendent of state prisons.

Thus amended by chap. 313, Laws of 1904.

#### **Railroads through Indian lands.**

§ 9. Any railroad corporation may contract with the chiefs of any nation of Indians, over whose lands it may be necessary to construct its railroad, for the right to make such road upon such lands, but such contract shall not vest in the corporation the fee to the land, nor the right to occupy the same for any purposes other than may be necessary for the construction, occupancy and maintenance of such railroad, and such contract shall not be valid or effectual until it shall be ratified by the county court of the county where the land shall be situated.

#### **Railroads through Chautauqua assembly grounds.**

§ 10. No railroad corporation shall build, construct or operate any railroad in, upon, over or through the grounds, lands or premises owned by the Chautauqua assembly corporation in the town and county of Chautauqua, without the written consent of a majority of the board of trustees of such assembly corporation.

#### **Intersection of highways additional lands for.**

§ 11. No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected. nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days written notice of the intention to make application for such order shall



have been given to the commissioners of highways of such town, or board of trustees of the village in which such highway or street is situated. Every railroad corporation which shall build its road along, across or upon any stream, watercourse, street, highway, plankroad or turnpike, which the route of its road shall intersect or touch, shall restore the stream or watercourse, street, highway, plankroad and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, and any such highway, turnpike or plankroad may be carried by it, under or over its track, as may be found most expedient. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plankroad desirable, with a view to a more easy ascent or descent, it may construct such highway, turnpike or plankroad, on such new line as its directors may select, and may take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plankroad, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plankroad are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plankroad corporation in consequence of its crossing or occupation of any turnpike or plankroad, and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation.

See chap. 300, Laws of 1835; also section 60 Railroad Law.

See 177 N. Y. 337.

#### Intersection of other railroads.

§ 12. Every railroad corporation, whose road is or shall be intersected by any new railroad, shall unite with the corporation owning such new railroad in forming the necessary intersections and connections, and grant the requisite facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made therefor or upon the line or lines, grade or grades, points or manner of such intersections and connections, the same shall be ascertained and determined by com-

missioners, one of whom must be a practical civil engineer and surveyor, to be appointed by the court, as is provided in the condemnation law. Such commissioners may determine whether the crossing or crossings of any railroad before constructed shall be beneath, at, or above the existing grade of such railroad, and upon the route designated upon the map of the corporation seeking the crossing or otherwise. All railroad corporations whose roads are or shall hereafter be so crossed, intersected or joined, shall receive from each other and forward to their destination all goods, merchandise and other property intended for points on their respective roads, with the same dispatch as, and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandise and other property, received at or forwarded from the same point for individuals and other corporations.

Thus amended by chap. 676, Laws of 1892.

See subdivision 5, section 4, Railroad Law, *ante*; sections 35 and 68, Railroad Law, and chap. 239, Laws of 1893, *post*.

See 171 N. Y., 589; 75 App. Div. 412; 175 N. Y. Mem. 468; 106 App. Div. 376.

#### Change of route, grade or terminus.

§ 13. Every railroad corporation, except elevated railway corporations, may, by a vote of two-thirds of all its directors, alter or change the route or any part of the route of its road or its termini, or locate such route, or any part thereof, or its termini, in a county adjoining any county named in its certificate of incorporation, if it shall appear to them that the line can be improved thereby, upon making and filing in the clerk's office of the proper county a survey, map and certificate of such alteration or change. If the same is made after the corporation has commenced grading the original route, compensation shall be made to all persons for injury done by such grading to any lands donated to the corporation. But neither terminus can be changed, under this section, to any other county than one adjoining that in which it was previously located; nor can the route or terminus of any railroad be so changed in any town, county or municipal corporation, which has issued bonds and taken any stock or bonds

in aid of the construction of such railroad without the written consent of a majority of the taxpayers appearing upon the last assessment roll of such town, county or municipal corporation, unless such terminus, after the change, will remain in the same village or city as theretofore. No alteration of the route of any railroad after its construction shall be made, or new line or route of road laid out or established, as provided in this section, in any city or village, unless approved by a vote of two-thirds of the common council of the city or trustees of the village. Any railroad corporation whose road as located terminates at any railroad previously constructed or located, whereby communication might be had with any incorporated city of the state, may amend its certificate of incorporation so as to terminate its road at the point of its intersection with any railroad subsequently located to intersect it, and thereby, by itself or its connection, afford communication with such city, with the consent of the stockholders owning two-thirds of the stock of the corporation. Any railroad corporation may, by a vote of its directors, change the grade of any part of its road, except that in the city of Buffalo such change must conform to the general plan heretofore adopted and filed by the grade crossing commissioners of said city, or any modification thereof, within the territory covered by said general plan, in such manner as it may deem necessary to avoid accidents and facilitate the use of such road; and it may by such vote alter the grade of its road, for such distance and in such manner as it may deem necessary, on each or either side of the place where the grade of its road has been changed by direction of the superintendent of public works, at any point where its road crosses any canal or canal feeder, except that in the city of Buffalo such change must conform to the general plan heretofore adopted and filed by the grade crossing commissioners of said city, or any modification thereof, within the territory covered by said general plan. The superintendent of public works shall have a general and supervisory power over that part of any railroad which passes over, or ap-

proaches within ten rods of any canal or canal feeder belonging to the state so far as may be necessary to preserve the free and perfect use of such canals or feeders, or to make any repairs, improvements or alterations, in the same. Any railroad corporation whose tracks cross any of the canals of the state, and the grade of which may be raised by direction of the superintendent of public works, with the assent of such superintendent, may lay out a new line of road to cross such canal at a more favorable grade, and may extend such new line and connect the same with any other line of road owned by such corporation upon making and filing in the clerk's office of the proper county a survey map and certificate of such new or altered line. No portion of the track of any railroad, as described in its certificate of incorporation, shall be abandoned under this section.

Thus amended by chap. 235, Laws of 1897.

See chap. 338, Laws of 1894. See chap. 340, Laws of 1902, *post*. See 172 N. Y., 462, 177 N. Y., 337.

#### Construction of part of line in another state.

§ 14. Any railroad corporation, whose proposed railroad is to be built between any two points in this state, may, by a vote of two-thirds of all its directors, locate and construct a part of its road in an adjoining state; and the sections of its road within this state shall be deemed a connected line, according to the certificate of incorporation, and the directors may reduce the capital stock of the corporation to such amount as may be deemed proper, but not less than ten thousand dollars per mile for the number of miles of road to be actually constructed in this state.

#### Two roads having the same location.

§ 15. If two railroad corporations for a portion of their respective lines embrace the same location of line, or if their lines connect, or are tributary to each other, such corporations may by agreement provide for the construction by one of them of so much of such line as is common to both, or connects with its own line, and for the manner and terms upon which

the business thereon shall be performed, and the corporation that is not to construct the part of the line which is common to both, may amend its certificate of incorporation, and terminate its line at the point of intersection, and may reduce its capital to a sum not less than ten thousand dollars for each mile of road proposed to be constructed in such amended certificate.

#### Tunnel railroads.

§ 16. When, according to the route and plan for the building of its road, adopted by any railroad corporation, including corporations organized under chapter one hundred and forty of the laws of eighteen hundred and fifty, and the acts amendatory thereof, and supplementary thereto, it shall be necessary or proper to build it or any part of it underground, or to tunnel or bridge any river or waters, such corporation may enter upon, acquire title to and use such lands under water and uplands, except on or along any canals of the state, as shall be necessary for the purpose herein mentioned, and may construct, erect and secure the necessary foundations and other structures which may be required for operating and maintaining such road, or connecting the same with another, and to acquire, in the manner provided by law, such land or rights or easements in lands along its route, upon, over or beneath the surface thereof as may be necessary for the construction of its road and making such connections. Where such road runs underneath the ground, at such depth as to enable the corporation to tunnel the same, such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same and in the neighborhood thereof firm and safe for buildings and other erections thereon, and if surface excavations are made the surface shall be restored to its former condition as soon as can be done, except so far as may be actually required for ventilation of the tunnel beneath the same or access thereto. Such road or any part of it may be built within the limits of any city or incorporated village of this state, and run by means of a tunnel

underneath any of the streets, roads or public places thereof, provided such corporation shall before constructing the same underneath any such street, road or public place, have obtained the consent of the owners of one-half in value of the property bounded on the line of such street, road or public place, and the consent of the board of trustees of the village, by a resolution adopted at a regular meeting and entered on the records of the board, or of the proper authorities of the city having control of such streets, roads or public places. If the consent of such property owners can not be obtained, the general term of the supreme court in the district in which said city or village or any part thereof is situated, may upon application appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be built underneath such streets, roads or public places, or any of them, and in what manner the same may be so built with the least damage to the surface and to the use of the surface by the public and the determination of the commissioners confirmed by the court may be taken in lieu of the consent of the property owners. All railroad corporations constructing their road under this section shall be subject to all the provisions of this chapter applicable thereto. Any other railroad corporation may connect its road therewith, at such points or places as it may elect, and where such connections shall be made by connecting roads, the railroad corporations owning such roads shall build, at their joint expense, and for their joint use, such passenger and freight depots, and other accommodations for handling passengers and freight, as may be required for the convenience of the public. All railroad corporations, constructing any tunnel under this section shall be liable to any person or corporation for all damages which may be sustained by reason of the construction of such tunnel. Whenever it shall be necessary in constructing any railroad authorized by this section through any city or incorporated village, to alter the position or course of any sewer, or water or gas pipes, it shall be done at the expense of the railroad corporation under the direction of the department or corporation having charge

thereof, so as not to interfere with such work. In all cases the uses of streets, docks and lands beneath which such railroad is constructed, and on the route thereof and the right of way beneath the same, for the purpose of such railroad shall be considered, and is hereby declared, a public use, consistent with and one of the uses for which streets and docks are publicly held. No public park or square in any city or village of this state shall be used or occupied by any corporation for any of the purposes of this section, and every road constructed hereunder in or through any such street or public place shall be wholly underground and constructed in a tunnel and not otherwise, but nothing in this section shall operate to revive any charter or franchise heretofore granted by or in the city of Brooklyn. This act does not authorize the construction of any bridge over or across the East or North Rivers.

Thus amended by chap. 316, Laws of 1893.

#### **Railroads in other countries.**

§ 17. A railroad corporation may be formed under this chapter for the purpose of constructing, maintaining and operating in any foreign country a railroad for public use in the transportation of persons and property, or for the purpose of maintaining and operating therein any railroad already constructed, in whole or in part, for the like public use, and of constructing, maintaining and operating, in connection therewith, telegraph lines and lines of steamboats or sailing vessels. Any corporation formed for the construction and operation of a railroad by stationary power, may construct, operate and maintain a railroad in any other state or country, if not in conflict with the laws thereof, but the assent of the inventors or patentees of the method of propulsion used must be first obtained in the same manner and to the same extent as would be necessary within the United States. The term "foreign" in this and the next two sections of this law shall include Porto Rico.

Thus amended by chap. 225, Laws of 1902.

**Additional corporate powers of such road.**

§ 18. The corporation specified in the preceding section shall have the following additional powers:

1. To expend money in making preliminary examinations and surveys for its proposed railroad, telegraph lines, and lines of steamboats and sailing vessels, and in acquiring from foreign countries, nations or governments, the grants, concessions and privileges herein authorized.

2. To take and receive from foreign countries, nations and governments, such grants, concessions or privileges, for the construction, acquisition, maintenance and operation of railroads, telegraph lines and vessels, as may be consistent with the purposes of the corporation, and as may be granted and conceded to it, and to hold the same under such restrictions and with such duties and liabilities as may be fixed by the laws of such foreign country, nation or government, or as may be annexed to such grants or concessions.

3. To construct, acquire, maintain and operate the lines of railroad, telegraph and shipping provided for by its certificate of incorporation, and to take and hold by purchase or by voluntary grant such real estate and other property in foreign countries as may be necessary and convenient for the construction, maintenance and accommodation of such lines, and to sell, convey, mortgage or lease such real estate or other property; and to acquire by purchase or otherwise any railroad or lines of telegraph constructed or in process of construction in any foreign country, and any grants, concessions, franchises, rights, privileges and immunities relating thereto, and to issue therefor the capital stock of the company or any part thereof at such valuation or valuations and on such terms as may be agreed upon, and to mortgage or sell and convey such railroad or lines of telegraph constructed or in process of construction in any foreign country, and any grants, concessions, franchises, rights, privileges and immunities relating thereto, or any part of its property to any person or corporation created by this or any other state or foreign government, subject to the laws of the country



or countries where such property may be, and the power of sale hereby granted shall be exercised only by a majority of the entire board of directors of the corporation, with the written concurrence of the holders of two-thirds in amount of its capital stock.

4. To take and convey persons and property on its transportation lines by the power or force of steam or of animals, or by mechanical or other power, and receive compensation therefor subject to the laws of the place or country where the same are situated.

5. To acquire and use such real estate and other property in this state as may be necessary in the conduct of its business, but the value of such real estate held at any one time shall not exceed the sum of one million dollars.

Thus amended by chap. 504, Laws of 1897.

#### Location of principal office of such road.

§ 19. Every such corporation shall maintain its principal office within this state and shall have during business hours, an officer or agent upon whom service of process may be made, and shall hold in this state at least one meeting of the stockholders in each year for the choice of directors, which shall be known as the annual meeting and be held at the time and place fixed by the by-laws of the corporation.

Thus amended by chap. 676, Laws of 1892.

#### Individual, joint stock association, or other corporation may lay down and maintain railroad tracks in certain cases.

§ 20. Any individual, joint stock association or corporation, engaged in any lawful business in this state, may, except in any city of the state, lay down and maintain such railroad tracks on or across any street or highway, not exceeding three miles in length, as shall be necessary for the transaction of its business, and to connect any place of business owned by them with the track of any railroad corporation, and render such place of business more accessible to the public, upon obtaining the written consent of the owners of all the lands bounded on and of the local authorities having control of that portion of the street or

highway, upon which it is proposed to construct or operate such railroad. If the consent of such property owners cannot be obtained, the general term of the supreme court of the department in which such railroad is to be constructed, may upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and the amount of damages, if any, to be paid to such property owners, and their determination confirmed by the court may be taken in lieu of the consent of the property owners. But no such railroad shall be so located, graded, built or operated as to interfere with or obstruct the traveled part of any highway, or its use as a highway, or the use of any street or highway intersecting the same.

#### **Powers of electric light and power corporations.**

§ 21. Whenever all of the stockholders of any domestic electric light and power company, incorporated under a general or special law, having not less than five stockholders, and actually engaged in carrying on business in this state, shall execute and file, in the offices in which its original certificates of incorporation are filed, an amended certificate of incorporation, complying in every other respect than as to the number of signers and directors, who shall not be less than five, with the provisions of the railroad law, and in which certificate the corporate name of such corporation shall be amended by adding before the word "company," in its corporate name, the words, "and railroad," or the words, "railroad and land," such corporation shall have the right to build, maintain and operate by electricity as a motive power, a railroad or railroads, not exceeding twenty-five miles in length, and within that distance from the power station, and shall also have the right to acquire the property and franchises of a railroad company or companies owning such a railroad or railroads, already constructed, and so operated, and to maintain and operate the same, provided that the directors of such railroad company or companies and all of its or their stockholders shall first have assented in writing to the transfer of the

property and franchises of such railroad company or companies, to such corporation; in which event and by the filing of such assent of directors and stockholders in the offices where the certificates of incorporation of the railroad company or companies were required to be filed, the rights, property and franchises of such railroad company or companies shall be transferred to, and shall vest in such corporation, and such corporation so acquiring such railroad or railroads shall be subject to all the provisions of chapter thirty-nine of the general laws with respect to the railroad property or properties and franchises, and shall have all the powers, rights and privileges conferred by said chapter upon railroad corporations; provided that no such corporation shall construct any railroad which is in whole or in part a street surface railroad without complying with the provisions of article four of the railroad law. Upon filing such certificate, such corporation shall also have the right to acquire by gift or by voluntary purchase and sale land not exceeding two thousand acres along the line of, or contiguous to, said railroad, and to hold, improve, lease or sell same. Whenever any such corporation shall furnish power to any water-works corporation carrying on its business in the county, or in a county adjoining that in which the operations of such corporation are carried on, it may acquire the shares of the capital stock of said water-works corporation, and, if such corporation shall become the owner of all the stock of said water-works corporation, it may, on executing and filing a certificate in accordance with the requirements of section fifty-eight of the stock corporations law, become possessed of all the estate, rights, property, privileges and franchises of such water-works corporation, with the effect provided in said section fifty-eight. This section shall not confer any powers upon any corporation located in, or authorize the construction, maintenance or operation of a railroad in a city of the first or second class, except in that part of any city of the first class which is or may be situate in a county of less than one hundred thousand inhabitants, according to the last preceding enumeration for the national census.

Thus amended by chap. 731, Laws of 1901.

\*§ 21. Any corporation, whose railroad is or shall be not longer than sixteen miles and is or shall be in large part intended for or used in summer travel or the convenience of summer sojourners need not operate its road beyond the months of June, July, August and September, inclusive. The motive power may be electricity. If the road be not longer than ten miles, such corporation may fix and collect fare for transporting each passenger, together with ordinary baggage, if any, not to exceed fifteen cents for each mile and fraction thereof.

This section added by chap. 700, Laws of 1892.  
See sections 37 and 55, Railroad Law, *post*.

#### Substituted lines in cases of eminent domain.

§ 22. Where a portion of a steam surface railroad or branch thereof, shall be specifically authorized by statute to be taken for any other public use, and such portion lies wholly outside of any city, any corporation owning or operating such portion may locate, as provided in section six of this article, and may construct and operate, in substitution for such portion, and with proper connections with the former line, a new line of steam surface railroad, wholly or partly in the same or any adjoining county, and wholly outside of any city, and not exceeding twenty-five miles in length, in the manner, with the powers and subject to the limitations and requirements provided in this chapter with respect to steam surface railroads.

This section added by chap. 656, Laws of 1898.

§ 23. Section twenty-four of the stock corporation law does not apply to a railroad corporation.

This section added by chap. 80, Laws of 1898.

Section 24, Stock Corporation Law, repealed by chap. 354, Laws of 1901.

## ARTICLE II.

### CONSTRUCTION, OPERATION AND MANAGEMENT.

SECTION 30. Liability of corporation to employes of contractor.

31. Weight of rail.

32. Fences, farm-crossings and cattle-guards.

33. Sign boards and flagmen or gates at crossings.

34. Notice of starting trains; no preferences.

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\*So in the original.

35. Accommodation of connecting roads.
36. Locomotives must stop at grade crossings; interlocking devices at street and steam railroad grade crossings.
37. Rates of fare.
38. Legislature may alter or reduce fare; anti-ticket scalping act.
39. Penalty for excessive fare.
40. Passenger refusing to pay fare may be ejected.
41. Sleeping and parlor cars.
42. Persons employed as drivers, conductors, motormen or gripmen.
43. Conductors and employees must wear badges.
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47. Tickets and checks for connecting steamboats.
48. Rights and liabilities as common carriers.
49. Duties imposed:
  1. Switches.
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  3. (Repealed.)
  4. Automatic couplers.
  5. Automatic or other safety brake.
  6. Tools in passenger cars.
  7. Water.
- 49a. Inspection of locomotive boilers.
- 49b. State inspector of locomotive boilers.
50. Railroad commissioners may approve other safeguards.
51. Use of stoves or furnaces prohibited.
52. Canada thistles to be cut.
53. Riding on platform; walking along track.
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55. Certain railroads may cease operations in winter.
56. Mails.
57. Corporations must make annual and quarterly and further reports.
58. When conductors and brakemen may be policemen.
59. Requisites to exercise of powers of future railroad corporations.
- 59a. Railroad commissioners may certify part of the route of a street surface railroad; power to revoke certificates; street surface railroad extension.
- 59b. Revocation of certificate under certain circumstances.
- 60-69. Grade Crossing Law.

**Liability of corporation to employes of contractor.**

§ 30. An action may be maintained against any railroad corporation by any laborer for the amount due him from any contractor for the construction of any part of its road, for ninety or any less number of days' labor performed by him in constructing such road, if within twenty days thereafter a written notice shall have been served upon the corporation, and the action shall have been commenced after the expiration of ten days and within six months after the service of such notice, which shall contain a statement of the month and particular days upon which the labor was performed and for which it was unpaid, the price per day, the amount due, the name of the contractor from whom due, and the section upon which performed, and shall be signed by the laborer or his attorney and verified by him to the effect that of his own knowledge the statements contained in it are true. The notice shall be served by delivering the same to an engineer, agent or superintendent having charge of the section of the road, upon which the labor was performed, personally, or by leaving it at his office or usual place of business with some person of suitable age or discretion; and if the corporation has no such agent, engineer or superintendent, or in case he cannot be found and has no place of business open, service may in like manner be made on any officer or director of the corporation.

See chap. 392, Laws of 1875, *post*; see sections 48 and 54, Stock Corporation Law, *ante*; see section 8, Labor Law, chaps. 418 and 419, Laws of 1897, *post*.

**Weight of rail.**

§ 31. The rail used in the construction or the relaying of the track of every railroad hereafter built or relaid in whole or in part shall be of iron or steel, weighing not less than twenty-five pounds to the lineal yard on narrow gauge roads, and on all other roads not less than fifty-six pounds to the lineal yard on grades of one hundred and ten feet to the mile or under, and not less than seventy pounds to the lineal yard on grades of over one hundred and ten feet to the mile, except for turnouts, sidings and switches.

**Fences, farm-crossings and cattle-guards.**

§ 32. Every railroad corporation, and any lessee or other person in possession of its road, shall, before the lines of its road are opened for use, and so soon as it has acquired the right of way for its roadway erect and thereafter maintain fences on the sides of its road of height and strength sufficient to prevent cattle, horses, sheep and hogs from going upon its road from the adjacent lands with farm crossings and openings with gates therein at such farm crossings whenever and wherever reasonably necessary for the use of the owners and occupants of the adjoining lands, and shall construct where not already done, and hereafter maintain, cattle-guards at all road crossings, suitable and sufficient to prevent cattle, horses, sheep and hogs from going upon its railroad. So long as such fences are not made, or are not in good repair, the corporation, its lessee or other person in possession of its road, shall be liable for all damages done by their agents or engines or cars to any domestic animals thereon. When made and in good repair, they shall not be liable for any such damages, unless negligently or willfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence within the provisions of this section, but barbed wire shall not be used in its construction.

No railroad need be fenced, when not necessary to prevent horses, cattle, sheep and hogs from going upon its track from the adjoining lands. Every adjoining land owner, who, or whose grantor, has received compensation for fencing the line of land taken for a railroad, and has agreed to build and maintain a lawful fence along such line, shall build and maintain such fence. If such owner, his heir or assign shall not build such fence, or if built, shall neglect to maintain the same during the period of thirty days after he has been notified so to do by the railroad corporation, such corporation shall thereafter build and maintain such fence, and may recover of the person neglecting to build and maintain it the expense thereof. And when such railroad shall cross timbered or forest lands, the company shall construct and maintain suitable and sufficient

crossings, whenever and wherever reasonably necessary to enable the respective owners of said lands, to transport logs, timber and lumber for manufacture or sale, or for banking on any stream, to be floated or driven down the same. In case of any neglect or dispute the supreme court may by mandamus or other appropriate proceedings, compel the same, and also fix the point or location of any such crossing.

Thus amended by chap. 676, Laws of 1892.  
See 44 Mis., 111, 345.

### Sign boards and flagmen or gates at crossings.

§ 33. Every railroad corporation shall cause a sign board to be placed, well supported and constantly maintained, at every crossing where its road is crossed by a public highway at grade. Such sign board shall be of a shape and design to be approved by the board of railroad commissioners, and shall have suitable words painted thereon to warn travelers of the existence of such grade crossing. The board of railroad commissioners shall have power to prescribe the location and elevation of such sign and the words of warning thereon. The commission may dispense with the use of such sign boards at such crossings as they may designate in cities and villages. At any point where a railroad crosses a street, highway, turnpike, plank-road, or traveled way at grade, or where a steam railroad crosses a horse railroad at grade, and the corporation owning or operating such railroad, refuses, upon request of the local authorities, to station a flagman or erect gates, to be opened and closed when an engine or train passes, the supreme court or the county court, may, upon the application of the local authorities and upon ten days' notice to the corporation, order that a flagman be stationed at such point, or that gates shall be erected thereat, and that a person be stationed to open and close them when an engine or train passes, or may make such other order respecting the same as it deems proper. Whenever the crossing by a railroad at grade of the streets, highways, turnpike, plank-roads, or traveled ways of any village or city, having a population by the last state or federal enumeration of less than fifty thousand, shall be protected by



gates with persons to open and close the same, when an engine or train passes, the local authorities of the city or village shall not impose any limitation, less than forty miles an hour, on the rate of speed at which such engine or train shall be run, or enforce any existing limitation upon such rate of speed, less than forty miles an hour.

Thus amended by chap. 301, Laws of 1901.  
See sections 36 and 68, Railroad Law.

#### **Notice of starting trains; no preferences.**

§ 34. Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all passengers and property which shall be offered for transportation at the place of starting, within a reasonable time previously thereto, and at the junctions of other railroads, and at the usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to, such places, on the due payment of the fare or freight legally authorized therefor. No station established by any railroad corporation for the reception or delivery of passengers or property, or both, shall be discontinued without the consent of the board of railroad commissioners first had and obtained. No preference for the transaction of the business of a common carrier upon its cars, or in its depots or buildings, or upon its grounds, shall be granted by any railroad corporation to any one of two or more persons, associations or corporations competing in the same business, or in the business of transporting property for themselves or others. Any such station in an incorporated village shall have the same name as the village; if any road shall have more than one such station in any such village the station nearest the geographical center thereof shall have such name.

Thus amended by chap. 676, Laws of 1892.

**Accommodation of connecting roads.**

§ 35. Every railroad corporation whose road, at or near the same place, connects with or is intersected by two or more railroads competing for its business, shall fairly and impartially afford to each of such connecting or intersecting roads equal terms of accommodation, privileges and facilities in the transportation of cars, passengers, baggage and freight over and upon its roads and over and upon their roads, and equal facilities in the interchange and use of passenger, baggage, freight and other cars required to accommodate the business of each road, and in furnishing passage tickets to passengers who may desire to make a continuous trip over any part of its roads and either of such connecting roads. The board of railroad commissioners may, upon application of the corporation owning or operating either of the connecting or intersecting roads, and upon fourteen days' notice to the corporation owning or operating the other road, prescribe such regulations as will secure, in their judgment, the enjoyment of equal privileges, accommodations and facilities to such connecting or intersecting roads as may be required to accommodate the business of each road, and the terms and conditions upon which the same shall be afforded to each road. The decision of the commissioners shall be binding on the parties for two years, and the supreme court shall have power to compel the performance thereof by attachment, mandamus, or otherwise.

See section 12, Railroad Law, *ante*.

See 171 N. Y., 589; 75 App. Div. 412; 175 N. Y. Mem. 468.

**Locomotives must stop at grade crossings; interlocking devices at street and steam railroad grade crossings.**

§ 36. All trains and locomotives on railroads crossing each other at grade shall come to a full stop before crossing, not less than two hundred or more than eight hundred feet from the crossing, and shall then cross only when the way is clear and upon a signal from a watchman stationed at the crossing. If the corporations can not agree as to the expense of the watchman, it shall be determined by the supreme court, upon motion

thereto by either of them. If the corporations disagree as to the precedence of trains, the board of railroad commissioners may, after hearing, upon the application of either corporation, prescribe rules in relation thereto. The full stop and crossing on signal may be discontinued if the board of railroad commissioners shall decide it to be impracticable, or if, with the approval of the commissioners, an interlocking switch and signal apparatus is adopted and put in operation as \* such a crossing. The full stop and crossing on signal shall not be required in depot yards, or the approaches thereto, if the crossing roads are under lease or subject to the same management or control in the use of tracks. An engineer, violating the foregoing provisions of this section, or any such rule of the railroad commissioners, shall be liable to a penalty of one hundred dollars; and any corporation or person operating the railroad, violating any of such provisions or rules shall be liable to a penalty of five hundred dollars. The board of railroad commissioners may, whenever in its judgment the public safety requires the erection of interlocking switch and signal devices at points where steam and street surface railroads intersect at grade, direct the erection of such devices and apportion the expense of construction, operation and maintenance thereof between the companies affected thereby. No railroad corporation, or any officer, agent or employe thereof, shall stop its cars, horses, or locomotives upon a grade crossing of a railroad of another corporation, for the purpose of receiving or delivering passengers or freight, or other purpose, and any person or corporation violating this provision, shall be liable to a penalty of two hundred and fifty dollars.

Thus amended by chap. 466, Laws of 1898.

See sections 33 and 68, Railroad Law.

### Rates of fare.

§ 37. Every railway corporation may fix and collect the following rates of fare as compensation to be paid for transporting any passenger and his baggage, not exceeding one hundred and fifty pounds in weight, for each mile or fraction of a mile.

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\*So in the original.

1. Where the motive power is rope or cable, propelled by stationary power, five cents, with right to a minimum fare of ten cents; but if the railroad is less than two miles in length, and overcomes an elevation of five hundred feet or more to the mile, five cents for each one hundred feet of elevation so overcome, and the same rates of fare if the motive power is locomotives, furnished with cogs working into cogs on the railway, and the length of road does not exceed four miles.

2. If a road, not incorporated prior to May 15, 1879, and not located in the counties of New York and Kings, or within the limits of any incorporated city, and not more than twenty-five miles in length, five cents; if over twenty-five and not more than forty miles, four cents; and if over forty miles, three cents. Where by the laying down of a third rail upon a railroad of the ordinary gauge, a narrow-gauge track is created and used for the transportation of passengers, and the length of road does not exceed six miles, including any connecting road of the same gauge, such railroad, for the purpose of fare, shall be deemed a narrow gauge road.

3. If its railroad overcomes an elevation of two hundred feet to the mile, for at least two consecutive miles, and does not exceed twenty miles in length, ten cents; if it overcomes an elevation exceeding three hundred feet to the mile, within a distance of two miles, five cents for each one hundred feet of elevation; and where it overcomes an elevation of more than one thousand feet, within a distance of two miles, seven cents for each one hundred feet of elevation in a mile.

4. If the line of its road does not exceed fifteen miles in length, and does not enter or traverse the limits of any incorporated city, and the distance traveled thereon by the passenger does not exceed one mile, five cents.

5. In all other cases, three cents for every such mile or fraction thereof, with a right to a minimum single fare of not less than five cents.

This chapter shall not be construed to allow any rate of fare for way passengers greater than two cents per mile to be charged

or taken over the track or tracks of the railroad known as the New York Central Railroad Company, and the rate of fare for way passengers over the track or tracks of such company shall continue to be two cents per mile and no more, wherever it is restricted to that rate of fare, nor shall any consolidated railroad corporation charge a higher rate of fare per passenger per mile, upon any part or portion of the consolidated line than was allowed by law to be charged by each existing corporation thereon previously to such consolidation.

Thus amended by chap. 676, Laws of 1892.

As to rate of fare for emigrants, see chap. 474, Laws of 1855, and § 626, Penal Code, *post*. See, also, chap. 228, Laws of 1857, and chap. 38, Laws of 1889, *post*. See, also § 21, Railroad Law, *ante*.

See also chap. 1027, Laws of 1895, *post*.

#### Legislature may alter or reduce fare; anti-ticket scalping act.

§ 38. The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rate of freight, fare or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with such profits less than ten per centum per annum on the capital actually expended; nor unless on an examination of the amounts received and expended, to be made by the board of railroad commissioners they shall ascertain that the net income derived by the corporation from all sources, for the year then last past, shall have exceeded an annual income of ten per centum upon the capital of the corporation actually expended. No person shall issue or sell, or offer to sell any passage ticket or instrument giving or purporting to give any right, either absolute or upon any condition or contingency to a passage or conveyance upon any vessel or railway train, or for a berth or state-room in any vessel unless he is an authorized agent of the owners or consignees of such vessel or of the company running such trains, excepting as allowed by sections six hundred and twenty-two and six hundred and twenty-three of the penal code; and no person is deemed an authorized agent of such owners, consignees or company unless he has received a certificate of authority in writing therefor, specifying the name of the com-

pany, line, vessel or railway for which he is authorized to act as agent, and the city, town or village, together with the street and street number in which his office is kept for the sale of tickets; and no general passenger agent or other officer of a common carrier whose duty it may be to supply tickets to the agents of said common carrier for sale to the public shall supply tickets for sale to any persons other than such regularly authorized agents or persons specified in sections six hundred and twenty-two and six hundred and twenty-three of the penal code.

Thus amended by chap. 639, Laws of 1901.

As to unconstitutionality of chap. 639, see 168 N. Y., p. 671.

See sections 615, *et seq.*, Penal Code, *post*.

#### Penalty for excessive fare.

§ 39. Any railroad corporation, which shall ask or receive more than the lawful rate of fare, unless such overcharge was made through inadvertence or mistake, not amounting to gross negligence, shall forfeit fifty dollars, to be recovered with the excess so received by the party paying the same; but no action can be maintained therefor, unless commenced within one year after the cause of action accrued.

#### Passenger refusing to pay fare may be ejected.

§ 40. If any passenger shall refuse to pay his fare the conductor of the train, and the servants of the corporation, may put him and his baggage out of the cars, using no unnecessary force, on stopping the train, at any usual stopping place, or near any dwelling house, as the conductor may elect.

#### Sleeping and parlor cars.

§ 41. Any railroad corporation may contract with any person, association or corporation for the hauling by the special or regular trains of said railroad corporation, the parlor, drawing-room or sleeping car or cars of such person, association or corporation, in which extra accommodations shall be furnished, for which said person, association or corporation furnishing such parlor, drawing-room or sleeping car or cars, may charge for

the carriage and transportation of persons and property therein, a reasonable compensation for such extra accommodation, in addition to the fare and charges now allowed by law for the carriage and transportation of passengers and property in the ordinary cars of said railroad corporation. But said railroad corporation so contracting shall be liable in the same way and to the same extent as if the said car or cars were owned by it, and shall furnish sufficient ordinary cars for the reasonable accommodation of the traveling public.

Thus amended by chap. 676, Laws of 1892.

**Persons employed as drivers, conductors, motormen or gripmen.**

§ 42. Any railroad corporation may employ any inhabitant of the State, of the age of twenty-one years, not addicted to the use of intoxicating liquors, as a car driver, conductor, motorman or gripman, or in any other capacity, if fit and competent therefor. All applicants for positions as motormen or gripmen on any street surface railroad in this State shall be subjected to a thorough examination by the officers of the corporation as to their habits, physical ability and intelligence. If this examination is satisfactory, the applicant shall be placed in the shop or power house where he can be made familiar with the power and machinery he is about to control. He shall then be placed on a car with an instructor, and when the latter is satisfied as to the applicant's capability for the position of motorman or gripman, he shall so certify to the officers of the company, and, if appointed, the applicant shall first serve on the lines of least travel. Any violation of the provisions of this section shall be a misdemeanor.

Thus amended by chap. 513, Laws of 1895.

See section 420, Penal Code, *post*; also section 41, chap. 112, Laws of 1896, *post*; also chap. 415, Laws of 1897, *post*; also section 56, Code of Criminal Procedure, and section 29, Rapid Transit Act, *post*.

**Conductors and employes must wear badges.**

§ 43. Every conductor and employe of a railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office or employment, and the initial letters of the corporation employ-

ing him. No conductor or collector without such badge shall demand or receive from any passenger any fare or ticket or exercise any of the powers of his employment. No officer or employe without such badge shall meddle or interfere with any passenger, his baggage or property.

Thus amended by chap. 676, Laws of 1892.

See section 425, Penal Code, *post*.

### Checks for baggage.

§ 44. A check, made of some proper substance of convenient size and form, plainly stamped with numbers, and furnished with a convenient strap or other appendage for attaching to baggage, shall be affixed to every piece or parcel of baggage when taken for transportation for a passenger by the agent or employee of such corporation, if there is a handle, loop or fixture therefor upon the piece or parcel of baggage, and a duplicate thereof given to the passenger or person delivering the same to him. If such check be refused on demand the corporation shall pay to the passenger the sum of ten dollars, and no fare shall be collected or received from him; and if he shall have paid his fare it shall be refunded to him by the conductor in charge of the train. Such baggage shall be delivered, without unnecessary delay, to the passenger or any person acting in his behalf, at the place to which it was to be transported, where the cars usually stop, or at any other regular intermediate stopping place upon notice to the baggage-master in charge of baggage on the train of not less than thirty minutes, upon presentation of such duplicate check to the officer or agent of the railroad corporation, or of any corporation, over any portion of whose road it was transported. Bicycles are hereby declared to be and be deemed baggage for the purposes of this article and shall be transported as baggage for passengers by railroad corporations and subject to the same liabilities, and no such passenger shall be required to crate, cover or otherwise protect any such bicycle; provided, however, that a railroad corporation shall not be required to transport, under the provisions of this act, more than one bicycle for a single person.

Thus amended by chap. 388, Laws of 1902.



**Penalties for injuries to baggage.**

§ 45. Any person, whose duty it is for or on behalf of the common carrier to handle, remove, or care for the baggage of passengers, who shall recklessly or willfully injure or destroy any trunk, valise, box, bag, package or parcel, while loading, unloading, transporting, delivering or storing the same, or any railroad corporation, which shall knowingly keep in its employment any such willful or reckless person, or which shall permit any injury or destruction of such property, through failure to provide sufficient help and facilities for the handling thereof, shall pay to the party injured thereby the sum of fifty dollars, in addition to such damages.

**Unclaimed freight and baggage.**

§ 46. Every railroad or other transportation corporation, doing business in this state, which shall have unclaimed freight or baggage, not live stock or perishable, in its possession for the period of sixty days, may deliver the same to any warehouse company, or person or persons engaged in the warehouse business, within this state, and take a warehouse receipt for the storage thereof. Upon such delivery and upon taking such warehouse receipt, every such railroad or other transportation corporation shall be discharged of all liability in respect to any such unclaimed freight or baggage from and after such delivery. At any time within two years after such delivery, such railroad or other transportation corporation shall surrender and transfer such warehouse receipt to the owner of any such unclaimed freight or baggage upon demand, and upon payment of all charges and expenses for transportation and storage then due, if any, to any such railroad or other transportation corporation. In case any such railroad or other transportation company shall have had unclaimed freight or baggage, not live stock or perishable, in its possession for a period of one year and shall not have delivered the same to a warehouse company or person or persons engaged in the warehouse business as above provided, then such railroad or other transportation company may proceed to sell the

same at public auction, and out of the proceeds may retain the charges of transportation, handling and storage of such unclaimed freight or baggage, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale, to be published weekly in a newspaper published in or nearest the town or city to which such unclaimed freight or baggage was consigned, or at which it was directed to be left, and also at the town or city where such sale is to take place; and said notice shall contain a general description of such unclaimed freight or baggage, the name of the shipper thereof, if known, and a statement of the consignment thereof, whether to a designated consignee or to order, if known, or the place, at which the same was to be left, as near as may be; and the expenses incurred for advertising shall be a lien upon such unclaimed freight or baggage in a ratable proportion, according to the value of each article, package or parcel, if more than one. Such railroad or other transportation company shall make an entry of the balance of the proceeds of the sale, if any, of the unclaimed freight or baggage consigned to the same consignee or covered by each consignment, as near as can be ascertained, and at any time within five years thereafter, shall refund any surplus so retained to the owners of such unclaimed freight or baggage, his personal representatives or assigns, on satisfactory proof of such ownership. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified, then it shall be paid to the county treasurer, for the use of the county poor of the county where the sale is made.

Unclaimed live stock and perishable freight or baggage may be sold by any such railroad or other transportation corporation without notice, as soon as it can be, upon the best terms that can be obtained. All moneys arising from the sale of any such unclaimed live stock, perishable freight or baggage, after deducting therefrom all charges and expenses for transportation, storage, keeping, commissions for selling the property, and any

amount previously paid for its loss or non-delivery, shall be deposited by the corporation making such sale with a report thereof, and proof that the property was live stock or perishable freight, with the comptroller for the benefit of the general fund of the state, and shall be held by him in trust for reclamation by the person or persons entitled to receive the same.

Thus amended by chap. 582, Laws of 1899.

See chap. 488, Laws of 1899 and chap. 313, Laws of 1901, *post*.

### **Tickets and checks for connecting steamboats.**

§ 47. The proprietors of any line of steamboats, terminating or stopping for passengers at any place where a railroad corporation has a depot or station, may furnish tickets and baggage checks to such corporation for the use of passengers, traveling over its road, who desire to connect with such line of boats at any such place, and the railroad corporation shall sell such tickets and deliver a duplicate of one of such checks to any such passenger applying therefor, and shall account for and pay over to the proprietor of such line of boats all moneys received by it for the sale of such tickets; and any such railroad corporation may furnish tickets and checks for baggage to the proprietors of any such line of steamboats for the use of passengers traveling over any part of such line of boats, who desire to connect with the railroad of any such corporation at any such place, and such proprietors shall sell such tickets and deliver a duplicate of one of such checks to any such passenger applying therefor, and shall account for and pay over to such corporation all moneys received by them for the sale of such tickets. No greater rate of fare shall be charged by any railroad corporation to any such passenger for the distance traveled over its road than is charged to travelers for the same distance whose trip ends at the place where connection is made with any such line of boats, and no greater rate of fare shall be charged by the proprietors of any such steamboat line to any such passenger for the distance traveled over its line, than is charged to travelers for the same distance whose trip ends at the place where connection is made with any such railroad. Any additional cost of

transfer of a passenger or his baggage from railroad depot or station to steamboat landing, or from steamboat landing to depot or station, shall be borne by the passenger or the proprietors of the steamboat line or the railroad corporation at whose instance or for whose benefit such transfer is made. Every railroad corporation and the proprietors of any line of steamboats, their agents or servants, who shall neglect or refuse to sell tickets or furnish a check to any passenger applying for the same, when the same shall have been furnished to them, shall pay to such passenger the sum of ten dollars, and no fare or toll shall be collected from him for riding over such road or upon such boats, as the case may be; and in addition thereto any railroad corporation so neglecting or refusing, shall pay the proprietors of such line of boats two hundred and fifty dollars for each day it shall so neglect or refuse; and the proprietors of any such line of boats so neglecting or refusing, shall pay to such railroad corporation a like sum for each day they shall so neglect or refuse.

Every such railroad corporation shall also receive any freight which shall be delivered at any station on the line of its road, marked to go by way of boat or any particular line of boats from any station on its road at which such boat or line of boats terminates or stops for freight, and shall transport such freight with all convenient speed to such station, and on its arrival there cause the proprietors of the steamboat line by which it is directed to be sent, or their agent, to be notified of such arrival, and shall deliver such freight to such proprietors or their agent with the bill of charges thereon due such railroad corporation, for the payment of which charges the proprietor or proprietors of such steamboat line shall be responsible, and shall account for and pay the same to such railroad corporation on demand. The railroad corporation shall not charge for the transportation of such freight over its road any greater sum pro rata than it charges for carrying the same kind of freight the same distance over its road, if it was to be transported by such corporation by rail to its final destination, or to the terminus of the road of such corporation in case it terminates before such final destina-

tion is reached. Any freight delivered by the proprietors of any steamboat or steamboat line, or their authorized agent, at any station, at a place where such steamboat or steamboats have a landing, to any such railroad corporation, for transportation over its road or any part thereof, shall be transported by such corporation to its place of destination for the same price pro rata which would be charged for the same kind of freight the same distance over its road, if the same had been taken on at the point of first shipment by boat, or at the terminus of the road of such corporation, in case it does not extend to the point of first shipment.

#### Rights and liabilities as common carriers.

§ 48. Every railroad corporation doing business in this state shall be a common carrier. Any one of two or more corporations owning or operating connecting roads, within this state, or partly within and partly without the state, shall be liable as a common carrier, for the transportation of passengers or delivery of freight received by it to be transported by it to any place on the line of a connecting road; and if it shall become liable to pay any sum by reason of neglect or misconduct of any other corporation it may collect the same of the corporation by reason of whose neglect or misconduct it became liable.

Thus amended by chap. 676, Laws of 1892.

See section 12, Railroad Law, *ante*; sections 381 and 383, Penal Code, *post*.

Switches; warning signals; automatic couplers; automatic or other safety brake; tools in passenger car; water.

§ 49. It shall be the duty of every railroad corporation operating its road by steam:

1. To lay, in the construction of new and in the renewal of existing switches, upon freight or passenger main line tracks, switches on the principle of either the so-called Tyler, Wharton, Lorenze, or split-point switch, or some other kind of safety switch, which shall prevent the derailment of a train, when such switch is misplaced or a switch interlocked with distant signals.

2. To erect and thereafter maintain such suitable warning signals at every road, bridge, or structure which crosses the railroad above the tracks, where such warning signals may be necessary, for the protection of employes on top of cars from injury.

Subdivision 3, relating to guard posts, repealed by chap. 740, Laws of 1900, but see section 424, Penal Code, *post*.

4. To use upon every new freight car, built or purchased for use, couplers which can be coupled and uncoupled automatically, without the necessity of having a person guide the link, lift the pin by hand, or go between the ends of the cars.

5. To attach to every car used for passenger transportation an automatic air-brake or other form of safety-power brake, applied from the locomotive, excepting cars attached to freight trains, the schedule rate of speed of which does not exceed twenty miles an hour.

6. To provide each closed car in use in every passenger train owned or regularly used upon a railroad, with one set of tools, consisting of an axe, sledge hammer, crowbar and hand saw and such other or additional tools as the board of railroad commissioners may require, to be placed where directed by the board of railroad commissioners.

Subdivision 6 thus amended by chap. 521, Laws of 1898.

7. To provide, in each passenger car, where the line of road shall exceed forty continuous miles in length, a suitable receptacle for water, with a cup or drinking utensil attached upon or near such receptacle, and to keep such receptacle, while the car is in use, constantly supplied with cool water.

Every corporation, person or persons, operating such railroad, and violating any of the provisions of this section, except subdivision seven, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that it shall omit or neglect to comply with any of such provisions. For every violation of the provisions of the seventh subdivision of this section every such corporation shall be liable to a penalty of twenty-five dollars for each offense.

As to automatic brakes and couplers, see, also, chaps. 543 and 544, Laws 1893, *post*. See section 424, Penal Code, *post*.

**Inspection of locomotive boilers.**

§ 49-a. It shall be the duty of every railroad corporation operated by steam power, within this state, and of the directors, managers or superintendents of such railroad to cause thorough inspections to be made of the boilers of all the locomotives which shall be used by such corporation or corporations, on said railroads. Said inspections shall be made, at least once every three months, by competent and qualified inspectors of boilers, under the direction and superintendence of said corporation or corporations, or the directors, managers or superintendents thereof. The person or persons who shall make said inspections, shall make and subscribe his name to a written or printed certificate which shall contain the number of each boiler inspected, the date of its inspection, the condition of the boiler inspected, and shall cause said certificate or certificates to be filed in the office of the railroad commissioners, within ten days after each inspection shall be made, and also with the officer or employee of such railroad having immediate charge of the operation of such locomotive. If it shall be ascertained by such inspection and test, or otherwise, that any locomotive boiler is unsafe for use, the same shall not again be used until it shall be repaired, and made safe. A certificate of a boiler inspector to the effect that the same is in a safe condition for use shall be made and filed in the office of the railroad commissioners. Every corporation, director, manager or superintendent operating such railroad and violating any of the provisions of this section shall be liable to a penalty, to be paid to the people of the state of New York, of one hundred dollars for each offense, and the further penalty of one hundred dollars for each day it or they shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor. Any person, upon application to the secretary of said board of railroad commissioners and on the payment of such reasonable fee as said board may by rule fix, shall be furnished with a copy of any such certificate.

Added by chap. 611, Laws of 1905.

**State inspector of locomotive boilers.**

\*§ 2. § 49-b. Within twenty days after this section takes effect, the state railroad commission shall appoint a competent person as inspector of locomotive boilers, who shall receive a compensation to be fixed by the commission, not exceeding three thousand dollars per year. Such inspector shall, under the direction of the commission, inspect boilers or locomotives used by railroad corporations operating steam railroads within the state, and may cause the same to be tested by hydrostatic test and shall perform such other duties in connection with the inspection and test of locomotive boilers as the commission shall direct. But this section shall not relieve any railroad corporation from the duties imposed by the preceding section.

Added by chap. 611, Laws of 1905.

**Railroad commissioners may approve other safeguards.**

§ 50. The board of railroad commissioners may, on the application of any railroad corporation, authorize it to use any other safeguard or device approved by the board, in place of any safeguard or device required by this article, which shall thereafter be used in lieu thereof, and the same penalties for neglect or refusal to use the same shall be incurred and imposed as for a failure to use the safeguard or device hereinbefore required, in lieu of which the same is to be used.

**Use of stoves or furnaces prohibited.**

§ 51. It shall not be lawful for any railroad corporation, operating a steam railroad in this state, of the length of fifty miles or more, excepting foreign railroad corporations, incorporated without the jurisdiction of the United States, running cars upon tracks in this state for a distance of less than thirty miles, to heat its passenger cars, on other than mixed trains, excepting dining-room cars, by any stove or furnace kept inside the car, or suspended therefrom, unless in case of accident or other emergency, when it may temporarily use such stove or furnace with necessary fuel, in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the

\*So in original.



locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still, and no stove or furnace shall be used in a dining-room car, except for cooking purposes, and of pattern and kind to be approved by the railroad commissioners. This section shall not be held to affect or interfere with the use by the commissioners of fisheries of this or other states, or of the United States, of stoves for heating or cooking or boilers for hatching operations in their fish car or cars. Any person or corporation, violating any of the provisions of this section, shall be liable to a penalty of one thousand dollars, and to the further penalty of one hundred dollars for each and every day during which such violation shall continue.

Thus amended by c. p. 299, Laws of 1896.

See section 423, Penal Code, *post*.

#### Canada thistles to be cut.

§ 52. Every railroad corporation doing business within this state, shall cause all Canada thistles, white and yellow daisies and other noxious weeds growing on any lands owned or occupied by it, to be cut down twice in each and every year, once between the fifteenth day of June and the twenty-fifth day of June, and once between the fifteenth day of August and the twenty-fifth day of August. If any such corporation shall neglect to cause the same to be so cut down, any person may cut the same, between the twenty-fifth day of June and the fifth day of July inclusive, and between the twenty-fifth day of August and the fifth day of September inclusive in each year, at the expense of the corporation on whose lands the same shall be so cut, at the rate of three dollars per day for the time occupied in cutting.

#### Riding on platform; walking along track.

§ 53. No railroad corporation shall be liable for any injury to any passenger while on the platform of a car, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation, posted up at the time in a conspicuous place inside of the passenger cars, then in the train, if there shall be

at the time sufficient room for the proper accommodation of the passenger inside such passenger cars. No person other than those connected with or employed upon the railroad shall walk upon or along its track or tracks, except where the same shall be laid across or along streets or highways, in which case he shall not walk upon the track unless necessary to cross the same. Any person riding, leading or driving any horse or other animal upon any railroad, or within the fences and guards thereof, other than at a farm or street or forest crossing, without the consent of the corporation, shall forfeit to the people of the state the sum of ten dollars, and pay all damages sustained thereby to the party aggrieved.

Thus amended by chap. 676, Laws of 1892.

#### **Corporations may establish ferries.**

§ 54. Any steam railroad corporation, incorporated under the laws of this state, with a terminus in the harbor of New York, may purchase or lease boats propelled by steam or otherwise, and operate the same as a ferry or otherwise, over the waters of the harbor of New York, but this section shall not be construed to affect the rights of the cities of New York and Brooklyn.

Thus amended by chap. 676, Laws of 1892.

#### **Certain railroads may cease operation in winter.**

§ 55. The directors of any railroad corporation operating a railroad, constructed and used principally for transporting lumber or ores, during the summer months, or for summer travel, may, by a resolution duly passed at a meeting thereof, apply to the board of railroad commissioners for permission to cease the operation of their road during the winter season, for a period, not exceeding seven months in any one year, specifying the date of such suspension, and the date of the reopening thereof; and such board may, in their discretion, make an order granting the application wholly or in part, and thereupon such railroad corporation shall be relieved of the duty of operating its road during the period specified in the order. A copy of such order shall be posted in all the depots and at the termini of such railroad, and

published in every newspaper in each town in any part of which such road shall be constructed at least four weeks prior to the date of such suspension.

See section 21, Railroad Law, *ante*.

### **Mails.**

§ 56. Any railroad corporation shall, when applied to by the postmaster-general, convey the mails of the United States on its road, and in case such corporation and the postmaster-general shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of carrying the same, the board of railroad commissioners shall fix the prices, terms and conditions therefor, after giving the corporation a reasonable opportunity to be heard. Such price shall not be less for carrying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. If the postmaster-general shall require the mail to be carried at other hours, or at higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as herein provided.

Every railroad corporation refusing or neglecting to comply with any provision of this section shall forfeit to the people of the state one hundred dollars for every day such neglect or refusal continues.

Thus amended by chap. 676, Laws of 1892.

**Corporations must make annual and quarterly and further reports.**

§ 57. Every person or corporation owning, leasing, operating or in possession of a railroad, wholly or partly, in this state, shall make an annual report to the board of railroad commissioners of its operations for the year ending with June thirtieth, and of its condition on that day which shall be verified by the oaths of the president, or treasurer, and the general manager, or act-

ing superintendent, and shall be filed in the office of such board on or before September first in each year. Every such person or corporation shall make quarterly and further reports to such board in the form and within the time prescribed by it. Such board may in its discretion change the date of the annual report and of filing the same, but the length of time between the date of the annual report and the filing of the same shall not be less than herein prescribed. Any person or railroad corporation which shall neglect to make any such report, or which shall fail to correct any such report within ten days after notice by the board of railroad commissioners, shall be liable to a penalty of two hundred and fifty dollars, and an additional penalty of twenty-five dollars for each day after September first on which it shall neglect to file the same, to be sued for in the name of the people of the state of New York, for their use.

The board of railroad commissioners may extend the time herein limited for cause shown.

Thus amended by chap. 676, Laws of 1892.

See section 158, Railroad Law, *post*; also sections 416, 602 and 611, Penal Code, *post*.

### When conductors and brakemen may be policemen.

§ 58. The governor may appoint any conductor or brakeman on any train conveying passengers on any steam railroad in this state, a policeman, with all the powers of a policeman in cities and villages, for the preservation of order and of the public peace, and the arrest of all persons committing offenses upon the land or property of the corporation owning or operating such railroad; and he may also appoint, on the application of any such corporation, or of any steamboat company, such additional policemen, designated by it, as he may deem proper, at any station, or upon any steamboat navigating the waters of this state, who shall have the same powers, but not more than one at any one station, or upon any such steamboat. Every such policeman shall within fifteen days after receiving his commission, and before entering upon the duties of his office, take and subscribe the constitutional oath of office, and file it with his commission

in the office of the secretary of state, who shall thereupon transmit to the county clerk of each county in which such policeman is authorized to act, a certificate, under his hand and official seal, setting forth the appointment and the filing of the commission and oath, which certificate shall be filed by the county clerk. Every such policeman shall when on duty wear a metallic shield, with the words "railway police" or "steamboat police" as the case may be, and the name of the corporation for which appointed inscribed thereon, which shall always be worn in plain view, except when employed as a detective. The compensation of every such policeman shall be such as may be agreed upon between him and the corporation for which he is appointed, and shall be paid by the corporation. When any corporation shall no longer require the services of any such policeman they may file notice to that effect in the several offices in which notice of his appointment was originally filed, and thereupon such appointment shall cease and be at an end.

Thus amended by chap. 539, Laws of 1899.

#### Requisites to exercise of powers of future railroad corporations.

§ 59. No railroad corporation hereafter formed under the laws of this state shall exercise the powers conferred by law upon such corporations or begin the construction of its road until the directors shall cause a copy of the articles of association to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks, and shall file satisfactory proof thereof with the board of railroad commissioners; nor until the board of railroad commissioners shall certify that the foregoing conditions have been complied with, and also that public convenience and a necessity require the construction of said railroad as proposed in said articles of association. The foregoing certificate shall be applied for within six months after the completion of the three weeks' publication hereinbefore provided for. If certificate is refused no further proceedings shall be had before said board, but the application may be renewed after one year

from the date of such refusal. Prior to granting or refusing said certificate the board shall have a right to permit errors, omissions or defects to be supplied and corrected. After a refusal to grant such certificate the board shall certify a copy of all maps and papers on file in its office and of the findings of the board when so requested by the directors aforesaid. Such directors may thereupon present the same to a general term of the supreme court of the department within which said road is proposed in whole or in part to be constructed, and said general term shall have power, in its discretion, to order said board, for reasons stated, to issue said certificate, and it shall be issued accordingly. Such certificate shall be filed in the office of the secretary of state, and a copy thereof, certified to be a copy by the secretary of state, or his deputy, shall be evidence of the fact therein stated. Nothing in this section shall prevent any such railroad corporation from causing such examinations and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants, to enter upon the lands or water of any person, but subject to the responsibility for all damages which shall be done thereto.

Thus amended by chap. 545, Laws of 1895.

See chap. 597, Laws of 1903, *post*; also chap. 649, Laws of 1896, *post*; also latter part of section 180, Tax Law, *post*.

See 96 Appellate Division p. 471, 178 N. Y., 75; 105 App. Div., 273; 103 App. Div., 123; 101 App. Div., 251.

See other decisions of courts under this section since 1892.

**Railroad commissioners may certify part of the route of a street surface railroad; power to revoke certificates; street surface railroad extension.**

§ 59-a. Whenever application is made by a street surface railroad company for a certificate of public convenience and a necessity as required by the provisions of the foregoing section, and it shall appear to the board of railroad commissioners, after examination of the proposed route of the applicant company that public convenience and a necessity do not require the construction of said railroad as proposed in its articles of association but

do require the construction of a part of the said railroad, the board of railroad commissioners may issue its certificate for the construction of such part of the said railroad as seems to it to be required by public convenience and a necessity. In case any railroad company which shall hereafter obtain the certificate of the board of railroad commissioners that public convenience and a necessity require the construction of the whole or a part of the said railroad shall fail to begin such construction within two years from the date of the issuing of said certificate, the board of railroad commissioners may inquire into the reason for such failure and the said board may revoke said certificate if it shall appear to it to be in the public interest so to do. Any street surface railroad company which proposes to extend its road beyond the limits of any city or incorporated village by a route which will be practically parallel with a street surface railroad already constructed and in operation shall first obtain the certificate of the board of railroad commissioners that public convenience and a necessity require the construction of such extension as provided in the case of a railroad corporation newly formed. Before making application for such certificate the corporation shall cause to be advertised the route of the proposed extension in one or more newspapers in each county in which such extension is to be constructed, at least once a week for three successive weeks, and shall file satisfactory proof of such publication with the board of railroad commissioners. Nothing in this section shall prevent street railroad companies from making extensions within the limits of cities or incorporated villages upon compliance with the provisions of law now applicable thereto.

Added by chap. 643, Laws of 1898, and thus amended by chap. 226, Laws of 1902. See statutes in this volume as to extension and limitation of time in which to construct railroads.

See 96 Appellate Division p. 471, 178 N. Y., 75, and decisions cited under immediately preceding section.

#### **Revocation of certificate under certain circumstances.**

§ 59-b. Whenever it shall be made to appear to the board of railroad commissioners that any steam railroad corporation, which has obtained from it a certificate under section fifty-nine of the railroad law since eighteen hundred and ninety-four and

whose road is less than ten miles in length, and was to be built in the counties of Saratoga and Washington, shall not have completed its construction and put it in operation within three years after obtaining such certificates,\* the said board, on notice to such corporation, shall have the power to revoke the said certificate and consent and thereupon the corporate existence and power of such railroad corporation shall cease and determine.

Added by chap. 597, Laws of 1899.

#### Grade crossing law, sections 60-69.

§ 60. All steam surface railroads, hereafter built except additional switches and sidings, must be so constructed as to avoid all public crossings at grade, whenever practicable so to do. Whenever application is made to the board of railroad commissioners, under section fifty-nine of the railroad law, there shall be filed with said board a map showing the streets, avenues and highways proposed to be crossed by the new construction, and the said board shall determine whether such crossing shall be under or over the proposed railroad, except where said board shall determine such method of crossing to be impracticable. Whenever an application is made under this section to determine the manner of crossing, the said board shall designate a time and place when and where a hearing will be given to such railroad company, and shall notify the municipal corporation having jurisdiction over such streets, avenues or highways proposed to be crossed by the new railroad. The said board shall also give public notice of such hearing in at least two newspapers, published in the locality affected by the application, and all persons owning land in the vicinity of the proposed crossings shall have the right to be heard. The decision of the said board rendered in any proceedings under this section shall be communicated, within twenty days after final hearing, to all parties to whom notice of the hearing in said proceedings was given, or who appeared at said hearing by counsel or in person.

Added by chap. 754, Laws of 1897.

See section 96, Railroad Law, *post*.

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\*So in original.



§ 61. When a new street, avenue or highway, or new portion of a street, avenue or highway shall hereafter be constructed across a steam surface railroad, other than pursuant to the provisions of section sixty-two of this act, such street, avenue or highway or portion of such street, avenue or highway, shall pass over or under such railroad or at grade as the board of railroad commissioners shall direct. Notice of intention to lay out such street, avenue or highway, or new portion of a street, avenue or highway, across a steam surface railroad, shall be given to such railroad company by the municipal corporation at least fifteen days prior to the making of the order laying out such street, avenue or highway by service personally on the president or vice-president of the railroad corporation, or any general officer thereof. Such notice shall designate the time and place and when and where a hearing will be given to such railroad company, and such railroad company shall have the right to be heard before the authorities of such municipal corporation upon the question of the necessity of such street, avenue or highway. If the municipal corporation determines such street, avenue or highway to be necessary, it shall then apply to the board of railroad commissioners before any further proceedings are taken, to determine whether such street, avenue or highway shall pass over or under such railroad, or at grade, whereupon the said board of railroad commissioners shall appoint a time and place for hearing such application, and shall give such notice thereof, as they judge reasonable, not, however, less than ten days, to the railroad company whose railroad is to be crossed by such new street, avenue or highway, or new portion of a street, avenue or highway, to the municipal corporation and to the owners of land adjoining the railroad and that part of the street, avenue or highway to be opened or extended. The said board of railroad commissioners shall determine whether such street, avenue or highway, or new portion of a street, avenue or highway, shall be constructed over or under such railroad or at grade; and if said board determine that such street, avenue or highway shall be carried across such railroad above grade, then said board

shall determine the height, the length and the material of the bridge or structure by means of which such street, avenue or highway shall be carried across such railroad, and the length, character and grades of the approaches thereto; and if said board shall determine that such street, avenue or highway shall be constructed or extended below the grade, said board shall determine the manner and method in which the same shall be so carried under, and the grade or grades thereof, and if said board shall determine that said street, avenue or highway shall be constructed or extended at grade, said board shall determine the manner and method in which the same shall be carried over said railroad at grade and what safeguards shall be maintained. The decision of the said board as to the manner and method of carrying such new street, avenue or highway, or new portion of a street, avenue or highway, across such railroad, shall be final, subject, however, to the right of appeal hereinafter given. The decision of said board rendered in any proceeding under this section shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in such proceeding was given or who appeared at such hearing by counsel or in person.

Thus amended by chap. 520, Laws of 1898.

See chap. 462, Laws of 1903, *post*.

See section 96, Railroad Law, *post*.

§ 62. The mayor and common council of any city, the president and trustees of any village, the town board of any town within which a street, avenue or highway crosses or is crossed by a steam surface railroad at grade, or any steam surface railroad company, whose road crosses or is crossed by a street, avenue or highway at grade, may bring their petition, in writing, to the board of railroad commissioners, therein alleging that public safety requires an alteration in the manner of such crossing, its approaches, the method of crossing, the location of the highway or crossing, the closing and discontinuance of a highway crossing and the diversion of the travel thereon to another highway or crossing, or if not practicable to change such crossing from grade or to close and discontinue the same, the open-

ing of an additional crossing for the partial diversion of travel from the grade crossing, and praying that the same may be ordered; whereupon the said board of railroad commissioners shall appoint a time and place for hearing the petition, and shall give such personal notice thereof as they shall judge reasonable, of not less than ten days, however, to said petitioner, the railroad company, the municipality in which such crossing is situated, and to the owners of the lands adjoining such crossing and adjoining that part of the highway to be changed in grade or location, or the land to be opened for a new crossing, and shall cause notice of said hearing to be advertised in at least two newspapers published in the locality affected by the application; and after such notice of hearing the said board of railroad commissioners shall determine what alterations or changes, if any, shall be made. The decision of said board of railroad commissioners rendered in any proceeding under this section, shall be communicated within twenty days after final hearing to all parties to whom notice of the hearing in said proceeding was given, or who appeared at said hearing by counsel or in person. Any person aggrieved by such decision, or by a decision made pursuant to sections sixty and sixty-one hereof, and who was a party to said proceeding, may within sixty days appeal therefrom to the appellate division of the supreme court in the department in which such grade crossing is situated and to the court of appeals, in the same manner and with like effect as is provided in the case of appeals from an order of the supreme court.

Thus amended by chap. 359, Laws of 1899.

See chap. 164, Laws of 1902, *post*.

See 176 N. Y., 324; 177 N. Y., 337; 179 N. Y., 393; 181 N. Y., 132.

See section 96, Railroad Law, *post*.

§ 63. The municipal corporation in which the highway crossing is located, may, with the approval of the railroad company, acquire by purchase any lands, rights or easements necessary or required for the purpose of carrying out the provisions of sections sixty, sixty-one and sixty-two of this act, but if unable to do so shall acquire such lands, rights or easements by condemnation either under the condemnation law, or under the provisions

of the charter of such municipal corporation. The railroad company shall have notice of any such proceedings and the right to be heard therein.

Thus amended by chap. 226, Laws of 1899.

§ 64. When a highway crosses a railroad by an overhead bridge, the frame work of the bridge and its abutments, shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto shall be maintained and kept in repair by the municipality in which the same are situated; except that in the case of an overhead bridge constructed prior to the enactment of sections sixty-one and sixty-two of this act, the roadway over and the approaches to which the railroad company was under obligation to maintain and repair, such obligations shall continue, provided the railroad company shall have at least ten days' notice of any defect in the roadway thereover and the approaches thereto, which notice must be given in writing by the commissioner of highways or other duly constituted authorities, and the railroad company shall not be liable by reason of any such defect unless it shall have failed to make repairs within ten days after the service of such notice upon it. When a highway passes under a railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality in which the same are situated.

Thus amended by chap. 140, Laws of 1902.

See chap. 164, Laws of 1902, *post*.

§ 65. Whenever, under the provisions of section sixty of this act, new railroads are constructed across existing highways, the expense of crossing above or below the grade of the highway shall be paid entirely by the railroad corporations. Whenever under the provisions of section sixty-one of this act a new street, avenue or highway is constructed across an existing railroad, the railroad corporation shall pay one-half and the municipal corporation wherein such street, avenue or highway is located, shall pay the remaining one-half of the expense of making such cross-

ing above or below grade; and whenever a change is made as to an existing crossing in accordance with the provisions of section sixty-two of this act, fifty per centum of the expense thereof shall be borne by the railroad corporation, twenty-five per centum by the municipal corporation, and twenty-five per centum by the state. Whenever, in carrying out the provisions of sections sixty-one or sixty-two of this act, two or more lines of steam surface railroad, owned and operated by different corporations, cross a highway at a point where a change in grade is made, each corporation shall pay such proportion of fifty per centum of the expense thereof as shall be determined by the board of railroad commissioners. In carrying out the provisions of sections sixty, sixty-one and sixty-two of this act the work shall be done by the railroad corporation or corporations affected thereby, subject to the supervision of and approval of the board of railroad commissioners, and in all cases, except where the entire expense is paid by the railroad corporation, the expense of construction shall be paid primarily by the railroad company, and the expense of acquiring additional lands, rights or easements, shall be paid primarily by the municipal corporation wherein such highway crossings are located. Plans and specifications of all changes proposed under sections sixty-one and sixty-two of this act, and an estimate of the expense thereof shall be submitted to the board of railroad commissioners for their approval before the letting of any contract. In case the work is done by contract the proposals of contractors shall be submitted to the board of railroad commissioners, and if the board shall determine that the bids are excessive it shall have the power to require the submission of new proposals. The board of railroad commissioners may employ temporarily such experts and engineers as may be necessary to properly supervise any work that may be undertaken under sections sixty, sixty-one or sixty-two of this act, the expense thereof to be paid by the comptroller upon the requisition and certificate of the said board, said expense to be included in the cost of the particular change in grade on account of which it is incurred and finally apportioned

in the manner provided in this section. Upon the completion of the work and its approval by the board of railroad commissioners an accounting shall be had between the railroad corporation and the municipal corporation, of the amounts expended by each with interest, and if it shall appear that the railroad corporation or the municipal corporation have expended more than their proportion of the expense of the crossing as herein provided, a settlement shall be forthwith made in accordance with the provisions of this section. All items of expenditure shall be verified under oath, and, in case of a dispute between the railroad corporation and the municipal corporation as to the amount expended, any judge of the supreme court in the judicial district in which the municipality is situated, may appoint a referee to take testimony as to the amount expended, and the confirmation of the report of the referee shall be final. In the event of the failure or refusal of the railroad corporation to pay its proportion of the expense, the same, with interest from the date of such accounting, may be levied and assessed upon the railroad corporation and collected in the same manner that taxes and assessments are now collected by the municipal corporation within which the work is done; and in the event of the failure or refusal of the municipal corporation to pay its proportion of the expense, suit may be instituted by the railroad corporation for the collection of the same with interest from the date of such accounting, or the railroad corporation may offset such amount with interest against any taxes levied or assessed against it or its property by such municipal corporation. The legislature shall annually appropriate out of any moneys not otherwise appropriated the sum of one hundred thousand dollars for the purpose of paying the state's proportion of the expense of a change in an existing grade crossing. If, in any year, any less sum than one hundred thousand dollars is expended by the state for the purpose aforesaid the balance remaining unexpended shall be applied to reduce the amount appropriated by the state in the next succeeding year, except that no such deduction shall be made in case there are outstanding and unadjusted obligations on account of a change

in an existing grade crossing for a proportion of which the state is liable under the provisions of this section. In the event of the appropriation made by the state in any one year being insufficient to pay the state's proportion of the expense of any change that may be ordered the first payment from the appropriation of the succeeding year shall be on account of said change, and no payment shall be made on account of any subsequent change that may be ordered, nor shall any subsequent change be ordered until the obligation of the state on account of the first named change in grade has been fully discharged, unless the same shall be provided for by an additional appropriation to be made by the legislature. The state's proportion of the expense of changing any existing grade crossing shall be paid by the state treasurer on the warrant of the comptroller, to which shall be appended the certificate of the board of railroad commissioners to the effect that the work has been properly performed and a statement showing the situation of the crossing that has been changed, the total cost and the proportionate expense thereof, and the money shall be paid in whole or in part to the railroad corporation or to the municipal corporation as the board of railroad commissioners may direct, subject, however, to the rights of the respective parties as they appear from the accounting to be had as hereinbefore provided for. No claim for damages to property on account of the change or abolishment of any crossing under the provisions of this act shall be allowed unless notice of such claim is filed with the board of railroad commissioners within six months after completion of the work necessary for such change or abolishment.

Thus amended by chap. 517, Laws of 1900.

§ 66. The railroad commissioners may, in the absence of any application therefor, when, in their opinion, public safety requires an alteration in an existing grade crossing, institute proceedings on their own motion for an alteration in such grade crossing, upon such notice as they shall deem reasonable, of not less than ten days, however, to the railroad company, the municipal corporation and the person or persons interested, and proceed-

ings shall be conducted as provided in section sixty-two of this act. The changes in existing grade crossings authorized or required by the board of railroad commissioners in any one year shall be so distributed and apportioned over and among the railroads and the municipalities of the state as to produce such equality of burden upon them for their proportionate part of the expenses as herein provided for as the nature and circumstances of the cases before them will permit.

Added by chap. 754, Laws of 1897.

See 189 N. Y., Mem., 11.

§ 67. It shall be the duty of the corporation, municipality or person or persons to whom the decisions or recommendations of the board of railroad commissioners are directed, as provided in sections sixty, sixty-one, sixty-two and sixty-six of this act to comply with such decisions and recommendations, and in case of their failure so to do, the board shall present the facts in the case to the attorney-general, who shall thereupon take proceedings to compel obedience to the decisions and recommendations of the board of railroad commissioners. The supreme court at a special term shall have the power in all cases of such decisions and recommendations by the board of railroad commissioners to compel compliance therewith by mandamus, subject to appeal to the appellate division of the supreme court and the court of appeals, in the same manner, and with like effect, as is provided in case of appeals from any order of the supreme court.

Added by chap. 754, Laws of 1897.

§ 67-a. Whenever in carrying out any of the provisions of sections sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, or sixty-seven of this act, any municipality shall incur any expense or become liable for the payment of any moneys, it shall be lawful for such municipality to temporarily borrow such moneys on the notes or certificates of such municipality, and to include the amount of outstanding notes or certificates, or any part thereof, in its next annual tax levy for municipal purposes, or in the discretion of the common council in case of a city, the board of trustees in case of a village or the town board



in case of a town, to borrow the same, or any part thereof, on the credit of the municipality, and to issue bonds therefor, which bonds shall be signed by the mayor and clerk in case of a city, the president and clerk in case of a village and the town board in case of a town, and shall be in such form and for such sums and be payable at such times and places with interest not exceeding four per centum per annum, as the common council in case of a city, the board of trustees in case of a village, and the town board in case of a town, shall direct.

Thus amended by chap. 198, Laws of 1902.

§ 68. All steam railroads hereafter constructed across the tracks of any other railroad and any street surface railroad hereafter constructed across a steam railroad shall be above, below, or at grade of such existing railroad as the board of railroad commissioners shall determine; and such board shall in such determination fix the proportion of expense of such crossing to be paid by each railroad.

Thus amended by chap. 739, Laws of 1900.

See sections 12, 33, 35 and 36, Railroad Law, *ante*, and chap. 239, Laws of 1893, *post*.

See 75 Appellate Division, p. 412, 175 N. Y. Mem. 468.

§ 69. The provisions of this act shall also apply to all existing or future steam surface railroads, on which, after the passage of this act, electricity or some other agency than steam shall be substituted as a motive power.

Added by chap. 754, Laws of 1897.

## CHAP. 754, LAWS OF 1897.

AN ACT to amend railroad law, and the act amendatory thereof, relative to grade crossings.

SECTION 1. Article two of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, entitled "An act in relation to railroads, constituting chapter thirty-nine of the general laws," known as the railroad law, as amended by chapter six hundred and seventy-six of the laws of eighteen hundred and ninety-two, is hereby amended by adding thereto the following sections:

See sections 60-69 of Railroad Law, above.

§ 2. None of the provisions of this act shall apply to crossings in the city of Buffalo under the jurisdiction of the grade crossing commissioners of that city, nor shall they apply to the University avenue or Brown street crossing, in the city of Rochester.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 4. This act shall take effect the first day of July, eighteen hundred and ninety-seven.

### ARTICLE III.

#### CONSOLIDATION, LEASE, SALE, AND REORGANIZATION.

##### SECTION 70. Consolidation of corporations owning continuous lines.

###### 71. Conditions.

1. Joint agreement; amount of capital stock.

2. Agreement to be submitted to meeting of stockholders.

###### 72. New corporation.

###### 73. Creditors' rights not to be impaired.

###### 74. Assessment of property of new corporation.

###### 75. Stocks of municipal corporations, how represented.

###### 76. Foreclosure of mortgages made by consolidated railroads partly in the state.

###### 77. Powers of corporations organized to acquire and operate railroads partly in the state.

###### 78. Lease of road.

###### 79. Lessees of railroad may acquire stock therein.

###### 80. Consolidation and lease of parallel lines prohibited.

###### 81. Mortgagee may purchase at foreclosure sale.

###### 82. Certificates of stock may be issued after foreclosure in certain cases.

###### 83. Liabilities of reorganized railroad corporations.

###### 84.

##### Consolidation of corporations owning continuous lines.

§ 70. Any railroad or other corporation, organized under the laws of this state, or of this state and any other state, and owning or operating a railroad, bridge or tunnel, either wholly within or partly within and partly without the state, or whose lines or routes of road have been located but not constructed, may merge and consolidate its capital stock, franchises, and property with the capital stock, franchises and property of any other railroad, tunnel or bridge corporation or corporations organized under the laws of this state or of this state and any other state, or under the laws of

any other state or states, whenever the two or more railroads of the companies or corporations so to be consolidated, tunnels, bridges or branches or any part thereof, or the line or routes of their road, if not constructed, shall or may form a continuous or connected line of railroad with each other or by means of any intervening railroad bridge, tunnel or ferry and any such consolidated corporation may thereupon construct or finish the construction of such continuous line of railroad, if not previously constructed, and operate the same, subject to all provisions of law applicable to such railroad corporations. Where the road to be operated is in whole or in part a tunnel or sub-surface road, authorized by section 16 of this chapter, its consolidation with another road or roads under the provisions of this section shall not prevent any connecting railroad from having equal rights of transit for its passengers and freight through or over the tunnel or bridge of any such road, upon the same equitable terms, nor shall such consolidation be made where such tunnel or subsurface road exceeds five miles in length.

Thus amended by chap. 676, Laws of 1892.

See chap. 193, Laws of 1897, chap. 201, Laws of 1899, and chap. 30, Laws of 1903, *post*.

### Conditions.

§ 71. Such consolidation shall be made in the following manner:

#### Joint agreement; amount of capital stock.

1. The directors of the corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each corporation, for the consolidation of such corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each corporation into that of the new corporation, and how and when the directors and officers shall be chosen, with

such other details as they shall deem necessary to perfect such new organization and the consolidation of such corporations. But in no case shall the capital stock of the corporation formed by such consolidation exceed the sum of the capital stock of the corporations so consolidated, at the par value thereof. Nor shall any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation. If either of the corporations so to be consolidated is a corporation organized under the laws of any other state the joint agreement herein provided for may fix the location of the principal office of the new corporation in either state.

Subdivision 1 thus amended by chap. 228, Laws of 1904.

**Agreement to be submitted to meeting of stockholders.**

2. If stockholders owning two-thirds of all the stock of each of such corporations shall by a consent in writing, acknowledged as are deeds entitled to be recorded and endorsed upon said lease or agreement, signify their assent thereto, it shall be deemed and taken as the adoption of such agreement by and on behalf of such corporation, and the original or a certified copy thereof shall be filed as hereinafter provided. If such agreement shall not be consented to in writing by holders of two-thirds of the stock of either of such corporations as hereinbefore provided, such agreement shall be submitted to the stockholders of each of such corporations at a meeting thereof called separately for the purpose of taking the same into consideration. Due notice of the time and place of holding such meeting, and the object thereof, shall be given by each corporation to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such corporation stands on the books thereof, and delivered to such persons respectively, or sent to them by mail, when their post-office address is known to the corporation, at least thirty days before the time of holding such meeting, and also by a general notice published at least once a week for four weeks successively in some newspaper printed in the city, town or county where such corporation has its principal office or place of business. At such meeting of

stockholders such agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same, and if the votes of the stockholders owning at least two-thirds of the stock of each corporation present and voting in person or by proxy shall be for the adoption of such agreement, then that fact shall be certified thereon by the secretaries of the respective corporations, under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state, and in the office of the clerk of the county where the new corporation is to have its principal place of business, and shall from thence be deemed and taken to be the agreement and act of consolidation of such corporations, and thereafter such corporations, parties thereto, shall be one corporation by the name provided in such agreement, but such act of consolidation shall not release such new corporation from any of the restrictions, liabilities or duties of the several corporations so consolidated.

Thus amended by chap. 676, Laws of 1892.

### **New Corporation.**

§ 72. Upon the consummation of such act of consolidation all the rights, privileges, exemptions and franchises of each of the corporations, parties to the same, and all the property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all stock subscriptions and other things in action belonging to either of them shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property, rights of way, and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this state, vested in either of such corporations, parties to such agreement and act, shall not be deemed to revert or be in any way impaired by reason of this act, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act

of consolidation. And it shall be lawful for any railroad company or corporation, now or hereafter formed by the consolidation of one or more railroad companies or corporations organized under the laws of this state, or under the laws of this state and other states, with one or more railroad companies or corporations organized under the laws of any other state, or of the laws of this state and other states, to issue its bonds for the purpose of paying or retiring any bonds theretofore issued by either of said companies or corporations so consolidated, or for any purpose and to the amount authorized by the laws of the state under which either of said companies or corporations so consolidated was organized, and secure the same by a mortgage upon its real or personal property, franchises, rights and privileges, whether within or without this state, and subject to the remedies for the enforcement of the same under the laws of either of said states. Nothing in this act contained shall authorize the execution of any such mortgage without the consent of the stockholders as now required by the laws of this state, nor compel any bondholder to accept payment in whole or in part of any bond or bonds held by him or to surrender the same before they shall become due.

Thus amended by chap. 362, Laws of 1891.

#### Creditors' rights not to be impaired.

§ 73. The rights of all creditors of, and all liens upon the property of, either of such corporations, parties to such agreement and act, shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same, and all debts and liabilities incurred by either of such corporations shall thenceforth attach to such new corporation, and be enforced against it and its property to the same extent as if incurred or contracted by it. No actions or proceedings in which either of such corporations is a party shall abate or be discontinued by such agreement and act of consolidation, but may be conducted to final judgment in the names of such corporations, or such new corporation may be, by order of the court, on motion substituted as a party.

**Assessment of property of new corporation.**

§ 74. The real estate of such new corporations, situate within this state, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is or may be taxed and assessed, and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this state, as the number of miles of its railroad situate in this state bears to the number of miles of its railroad situate in the other state or states.

**Stocks of municipal corporations, how represented.**

§ 75. At any meeting of the stockholders of any railroad corporation to consider any agreement or proposition to consolidate or lease, the commissioners or other officers of any municipal corporation holding or having charge of any of the capital stock of such railroad corporation shall represent such municipal corporation, and may act and vote in person or by proxy on all matters relating to such consolidation or lease in the same manner as individual stockholders.

Thus amended by chap. 546, Laws of 1893.

See section 6, Stock Corporation Law, *ante*; town bonding acts, *post*.

**Foreclosure of mortgages made by (consolidated) railroads partly in the state.**

§ 76. Whenever a railroad corporation of this or of any other state or states whose line of road lies partly in this state and partly in another state or states, shall have executed a mortgage upon its entire line of railroad, and a sale of the entire line of road under such mortgage shall have been or may hereafter be ordered, adjudged and decreed by a court of competent jurisdiction of the state or states, or by a court of the United States sitting within the state or states in which the greater part of such line of railroad may be situated, upon the confirmation of such judgment or decree, and of the sale made thereunder, by the supreme court of this state or by the circuit court of the United States in the judicial district in which some part of such

line of road is situated, such sale shall operate to pass title to the purchaser, of that part of the line of railroad lying in this state, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree under which such sale is had, had been made by a court of competent jurisdiction of this state. Such judgment or decree and sale may be so ordered, adjudged, decreed or confirmed in any action or proceeding heretofore or hereafter brought in the supreme court, or in a court of the United States sitting in this state, for the foreclosure of such mortgage, or in aid of an action for that purpose in such other state or states, if it shall appear that such confirmation is for the interest of the public and of the parties, due and lawful provision being made for and in respect of any liens upon that part of the line of road or other property sold situate in this state, and for such costs, expenses, and charges which may appear to be just and lawful. If a receiver of the entire line of such railroad shall have been, or may hereafter be appointed by such court of competent jurisdiction of the state in which the greater part of the line of railroad is situated, or by a court of the United States sitting in such other state, such receiver may perform, within this state, the duties of his office not inconsistent with the laws of this state, and may sue and be sued in the courts of this state.

Thus amended by chap. 356, Laws of 1896; see section 3 of said act, printed after section 77 of this act.

**Powers of corporations organized to acquire and operate railroads partly in the state.**

§ 77. A railroad corporation created under the laws of the state or states in which the greater part of the line of its railroad may be situated, or a railroad corporation created under the railroad law, or under article one of the stock corporation law in this state, for the purpose of taking title to, and operating, the line of road as so sold, under a judgment or decree of a court of this state, or of a court of the United States sitting in this state, for the foreclosure of a mortgage, with its franchises and appurtenances, may hold, possess and operate not only those



parts of the railroad lying in other states, but also that part of the line of such railroad lying in this state, and shall be subject to the duties and liabilities to which such corporation was, by the laws of this state, subject, and to such further or other duties and liabilities as are now or may hereafter be imposed by law upon railroad corporations of this state, and the provisions of the stock corporation law concerning reorganization of corporations shall apply to, and in respect of, every such successor railroad corporation. An exemplified copy of the certificate or certificates of incorporation, under and by virtue of which any such corporation is created in any other state, and a certified copy of the judgment or decree of any court sitting in any other state, under which said railroad shall have been sold, and a certified copy of the order or judgment or decree of confirmation and approval required by the preceding section, or of the order, judgment or decree of the court of this state, or of the United States in this state, which decreed the sale, confirming the same, shall be filed in the office of the secretary of state for this state, and in the office of the county\* clerk of the county where its principal business office in this state is or shall be located.

Thus amended by chap. 356, Laws of 1896.

§ 3 of chap. 356, Laws of 1896: This act shall take effect immediately, and shall apply in respect of decrees, foreclosures, sales, confirmations, reorganizations and incorporations, whether heretofore or hereafter made, provided, however, that nothing in this act shall affect any action or proceeding pending in any court, on or before the first day of April, eighteen hundred and ninety-six, to establish the invalidity of any foreclosure or reorganization theretofore had, or to enforce any judgment or claim arising before such foreclosure or reorganization.

#### Lease of road.

§ 78. Any railroad corporation or any corporation owning or operating any railroad or railroad route within this state may contract with any other such corporation for the use of their respective roads or routes, or any part thereof, and thereafter use the same in such manner and for such time as may be prescribed in such contract. Such contract may provide for the exchange or guaranty of the stock and bonds of either of such corporations by the other and shall be executed by the contract-

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\* So in original.

ing corporations under the corporate seal of each corporation, and if such contract shall be a lease of any such road and for a longer period than one year, such contract shall not be binding or valid unless approved by the votes of stockholders owning at least two-thirds of the stock of each corporation which is represented and voted upon in person or by proxy at an annual meeting of the stockholders for the purpose of electing directors, called in the manner prescribed by law, provided that the notice of such meeting shall state that one of the purposes thereof will be the approval of such lease, or at a meeting, called separately for that purpose upon a notice stating the time, place and object of the meeting, served at least thirty days previously upon each stockholder personally, or mailed to him at his post office address and also published at least once a week, for four weeks successively, in some newspaper printed in the city, town or county where such corporation has its principal office, and there shall be indorsed upon the contract the certificate of the secretaries of the respective corporations under the seals thereof, to the effect that the same has been approved by such votes of the stockholders, and the contract shall be executed in duplicate and filed in the offices where the certificates of incorporation of the contracting corporations are filed. The road of a corporation cannot be used under any such contract in a manner inconsistent with the provisions of law applicable to its use by the corporation owning the same at the time of the execution of the contract. Such contracts shall be executed by the corporations, parties thereto, and proved and acknowledged in such manner as to entitle the same to be recorded in the office of the clerk or register of each county through or into which the road so to be used shall run. If any contract so recorded shall be or has been terminated by the contracting corporations in pursuance of resolutions of their respective boards of directors prior to the time specified in such contract for the termination thereof, then the contracting corporations shall execute, acknowledge and procure to be recorded in each office where such contract is recorded a certificate to the effect that such contract has been

terminated, stating the date of the termination thereof, and said certificates so recorded shall be presumptive evidence of the termination of such contract accordingly. Nothing in this section shall apply to any lease in existence prior to May first, eighteen hundred and ninety-one.

Thus amended by chap. 695, Laws of 1905.

**Lessees of railroad may acquire stock therein.**

§ 79. Any railroad corporation created by the laws of this state, or its successors, being the lessee of the road of any other railroad corporation, may take a surrender or transfer of the capital stock of the stockholders, or any of them in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do, to be entered on their minutes, become ex-officio the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof, as provided by law; and whenever the whole of such capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the corporation whose stock shall have been so surrendered or transferred, shall thereupon vest in and be held and enjoyed by the corporation, to whom such surrender or transfer shall have been made, as fully and entirely, and without change or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the corporation, to whom such surrender or transfer of such stock shall have been made, and in the corporate name of such corporation. Where stock shall have been so surrendered or transferred, the existing liabilities of the corporation, and the rights

of the creditors and of any stockholder not surrendering or transferring his stock, shall not be affected thereby.

**Consolidation and lease of parallel lines prohibited.**

§ 80. No railroad corporation or corporations owning or operating railroads whose roads run on parallel or competing lines, except street surface railroad corporations, shall merge or consolidate, or enter into any contract for the use of their respective roads, or lease the same, the one to the other, unless the board of railroad commissioners of the state or a majority of such board shall consent thereto.

Thus amended by chap. 676, Laws of 1892.

**Mortgagee may purchase at foreclosure sale.**

§ 81. Any mortgagee of the property and franchises of any railroad corporation may become the purchaser of the same at any sale thereof under the mortgage, upon foreclosure by advertisement, or under a judgment, or decree, or otherwise, and hold and use the same, with all the rights and privileges belonging thereto or connected therewith for the period of six months, and convey the same to any railroad corporation.

**Certificates of stock, may be issued after foreclosure in certain cases.**

§ 82. If any person or corporation shall be entitled to certificates of stock subscribed to and paid for in any railroad corporation whose property and franchises have been sold under mortgage foreclosure, and such certificates have not been issued before foreclosure, the officers of the corporation shall, at any time within six months after the foreclosure sale issue and deliver to the person or corporation entitled thereto, upon demand, such certificates of stock, which shall have all the force and effect and confer upon the holder all the rights which he would have had if such certificates of stock had been issued at the time of the payment of the subscription thereto.

**Liabilities of reorganized railroad corporations.**

§ 83. A railroad corporation, reorganized under the provisions of law, relating to the formation of new or reorganized corpora-

tions upon the sale of their property or franchise, shall not be compelled or required to extend its road beyond the portion thereof constructed, at the time the new or reorganized corporation acquired title to such railroad property and franchise, provided the board of railroad commissioners of the state shall certify that in their opinion the public interests under all the circumstances do not require such extension. If such board shall so certify and shall file in their office such certificate, which certificate shall be irreversible by such board, such corporation shall not be deemed to have incurred any obligation so to extend its road and such certificate shall be a bar to any proceedings to compel it to make such extension or to annul its existence for failure so to do, and shall be final and conclusive in all courts and proceedings whatever. This section shall not authorize the abandonment of any portion of a railroad which has been constructed and operated, or apply to Kings county.

§ 84. All the provisions contained in the several sections of this act shall extend, apply to and cover the consolidation, lease, sale or reorganization of any railroad or other corporation heretofore or hereafter organized, under the laws of this State, and any other State or country, to build, lease, buy, sell, maintain or operate any of the lines or routes of railroads, tunnels, bridges, ferries or branches or any part thereof mentioned in this article, and any similar lines or routes of railroad, tunnels, bridges, ferries or any part thereof, constructed or to be located and constructed in any foreign country.

This section added by chap. 921, Laws of 1895.

## ARTICLE IV.

### STREET SURFACE RAILROADS.

SECTION 90. Street surface railroads; general provision.

91. Consent of property owners and local authorities.

92. Consent of local authorities; how procured.

93. Condition upon which consent shall be given; sale of franchise at public auction.

94. Proceedings if property owners do not consent.

95. Percentage of gross receipts to be paid in cities or villages; report of officers.

- SECTION 96. Extension of route over rivers; terminus in other counties; when property owners withhold consent; supreme court may appoint commissioners.
- 97. Use of tracks of other roads.
  - 98. Repair of streets; rate of speed; removal of ice and snow.
  - 99. Within what time road to be built.
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  - 101. Rate of fare.
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  - 106. Corporate rights saved in case of failure to complete road; right to operate branches; conditions; former consents ratified; limitations.
  - 107. When sand may be used on tracks.
  - 108. Road not to be constructed upon ground occupied by public buildings or in public parks.
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  - 110. Right to cross bridge substituted for bridge crossed for five years.
  - 111. Protection of employees.
  - 111a. Protection to employees.
  - 112\*. Protection of employees in the counties of Kings and Queens.
  - 112\*.

### Street surface railroads; general provisions.

§ 90. The provisions of this article shall apply to every corporation which, under the provisions thereof, or of any other law, has constructed or shall construct or operate, or has been or shall be organized to construct or operate, a street surface railroad, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons and property for compensation, upon and along any street, avenue, road, highway, or private property, in any city, town or village, or in any two or more civil divisions of the State, and every such corporation must comply with the provisions of this article. Any street surface railroad corporation, at any time proposing to extend its road or to construct branches thereof, may, from time to time, make and file in each of the offices in which its certificate of incorporation is filed, a statement of the names and descrip-

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\*So in original.

tion of the streets, roads, avenues, highways and private property in or upon which it is proposed to construct, maintain or operate such extensions or branches. Upon filing any such statement and upon complying with the conditions set forth in section ninety-one of the railroad law, every such corporation shall have the power and privilege to construct, extend, operate and maintain such road, extensions or branches, upon and along the streets, avenues, roads, highways and private property named and described in its certificate of incorporation or in such statement. Every such corporation, before constructing any part of its road upon or through any private property described in its articles of association or certificate of incorporation or statement, and before instituting any proceeding for the condemnation of any real property, shall make a map and profile of the route adopted by it upon or through any private property, which map and profile shall be certified by the president and engineer of the company, or a majority of its directors, and shall be filed in the office of the clerk of the county in which the road is to be constructed, and all provisions of section six of the act hereby amended so far as applicable shall apply to the route so located. If any such street surface railroad company is unable to agree for the purchase of any such real property, or of any right or easement therein required for the purpose of its railroad, or if the owner thereof shall be incapable of selling the same, or if, after diligent search and inquiry, the name and residence of such owner can not be ascertained, it shall have the right to acquire title thereto by condemnation in the manner and by the proceedings provided by the condemnation law. Nothing in this section shall be deemed to authorize a street railroad corporation to acquire real property within a city by condemnation.

Thus amended by chap. 933, Laws of 1895.

See, also, chap. 604, Laws of 1892, and chap. 679, Laws of 1893, *post*.

See 96 App. Div., 471, 178 N. Y., 75.

See 88 App. Div., p. 201.

#### Consent of property owners and local authorities.

§91. A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the con-

sent in writing acknowledged or proved as are deeds entitled to be recorded, of the owners in cities and villages, of one-half in value, and in towns, not within the corporate limits of a city or village, of the owners of two-thirds in value, of the property bounded on and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad, extension or branch shall have been first obtained. Such consents of property owners in the county of Kings which shall be hereafter executed, may be forfeited unless within sixty days after the execution thereof, the same shall be recorded in the office of the register of such county. Such register is hereby directed upon the payment of the proper fees to record all consents left with him for that purpose in books to be provided by him and paid for out of the funds provided to meet the expenses of said office. Such books shall be indexed according to the names of the consenting property owners and also according to the names of the streets, roads or other highways upon which the property to which the consent relates shall be bounded on. In case the recording of such consents shall be hindered, delayed or prevented by legal proceedings in any court or from any other or different cause not within the control of the corporation upon which such requirement is imposed, the time for the performance of such act is hereby and shall be deemed to be extended for the period covered by such hindrance, delay or prevention. The consents of property owners in one city, village or town, or in any other civil division of the state, shall not be of any effect in any other city, village or town or other civil divisions of the state. Consents of property owners heretofore obtained to the building, extending operating or change of motor power shall be effectual for the purposes therein mentioned and may be deemed to be sufficiently proved and shall be entitled to be recorded, wherever such consents shall have been signed, executed or acknowledged before an officer authorized by law to take acknowledgments of deeds, or before or in the presence of a subscribing witness, and without regard to whether or not the subscribing witness shall have affixed his signature in



the presence of the subscriber, provided that the proof of such signing, execution or acknowledgment shall have been made by such subscribing witness in the manner prescribed by chapter three, part two of the revised statutes. In cities the common council, acting subject to the power now possessed by the mayor to veto ordinances; in villages the board of trustees, and in towns the commissioner or commissioners of highways shall be the local authorities referred to; except that in villages where the control of the streets is vested in any other board or authorities, such other board or authorities shall be the local authorities referred to, and the consent of such other board or authorities hereafter or heretofore obtained shall be sufficient; if in any city or county the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, extension or branch, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village or town as the owners of such property. Whenever heretofore or hereafter a railroad has been or shall be constructed and put in operation for one year or the motive power thereon has been or shall be changed and put in operation for a similar length of time, such facts shall be presumptive evidence that the requisite consents of local authorities, property owners and other authority to the construction, maintenance and operation of such railroad or change of motive power have been duly obtained. No consent of local authorities heretofore given shall be deemed invalid because of any portion of the road or route consented to

not being connected with an existing road or route of the corporation obtaining or acquiring such consent and all statements of extension filed under section ninety of this article in reference to the route or part thereof described in any consent of local authorities are hereby ratified and confirmed, whether the same were filed before or after the obtaining or acquiring of such consents, provided, however, that nothing herein contained shall be construed to affect any portion of a street surface railroad which is now in or upon any portion of a street which is under the jurisdiction of a park department in any city containing a population of over twelve hundred thousand inhabitants.

Thus amended by chap. 650, Laws of 1905.

See chap. 379, Laws of 1902, *post*.

#### Consent of local authorities; how procured.

§ 92. The application for the consent of the local authorities shall be in writing and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers if there be two, if not, in one, to be designated by the mayor, and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers if there be two, if not, one published in the city nearest such village or town. Such consent must be upon the expressed condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located. Whenever the consent of the common council of a city is applied for, the first consideration, of which notice is hereby required, may be by committee of such common council. Any such notice, publication or consideration heretofore or hereafter given, made or had in substantial conformity with the requirements of this section, is and shall be sufficient notice, publication and consideration for all the purposes hereof notwithstanding any conflicting provision of any local or special act or charter.

Thus amended by chap. 434, Laws of 1893.

**Condition upon which consent shall be given; sale of franchise at public auction.**

§ 93. The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last federal census or state enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form and amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city, for the fulfillment of such agreement and for the commencement and completion of its railroad within the time designated by law and for the performance of such additional conditions as the local authorities in their discretion may prescribe. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor; and further, that if such right shall be purchased by any corporation other than the applicant, that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road whether owned or leased which shall have applied therefor and of such branch or extension, and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road, whether owned or leased. The bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given; but no such cor-

poration shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties, to be approved by such comptroller or officer, conditioned that if such right, franchise and privilege shall be sold to such corporation, to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route or routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the corporation first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to the requirements and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time and place and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers, at least three times a week in two of such papers to be designated by the mayor, and in any city where two daily papers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may adjourn the same, but not more than four weeks in all, unless further adjournments should, in his discretion, be necessary by reason of the pendency of legal proceedings, and shall cancel any bid if in

excess of the gross receipts, leaving in force the highest bid not in excess, or if the bidder shall not have furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentages of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent and right heretofore granted shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities, unless it be otherwise provided in such consent or in some renewal thereof may be forfeited at the expiration of two years thereafter, and every consent by the local authorities of any city of the first class or of any city, town or village now embraced within the corporate limits of any city of the first class heretofore given to or acquired or owned by any street surface railroad corporation, since January first, eighteen hundred and ninety, is hereby ratified and confirmed, and shall be deemed to be in full force and effect, and shall continue until and including December thirty-first, nineteen hundred and three when it may be forfeited unless prior thereto the required consent of property owners, or determinations by the appellate division of the supreme court, in lieu

thereof, shall have been first obtained. The board of sinking fund commissioners of any city shall have power to reduce, compromise or release any obligation or liability to the mayor, aldermen and commonalty of such city under the provisions of chapter six hundred and forty-two of the laws of eighteen hundred and eighty-six, or of this chapter whenever, in the opinion of such board, such release or compromise shall be just or equitable, or for the public interest, the reason for any such release or compromise to be stated in the recorded proceedings of such board. No lease by any company organized under section two of the railroad law and owning a right, privilege or franchise of using any street, avenue, highway or public place for railroad purposes, which has heretofore been sold under the provisions of this section, hereafter made to any street surface railroad company which is not subject to the payment of any percentage pursuant to this section, and which is not organized for the purpose of operating a railroad in a city of the first class, shall be valid until the leased company shall have filed in the office of the secretary of state and in the office of the clerk of the county where its certificate of incorporation is filed, its acceptance in writing and under its corporate seal of the provisions of this section as now amended; and upon such acceptance being filed, the total percentage amount thereafter to be paid annually under this section and under section ninety-five of this act, shall be at the rate of five per centum of the gross receipts derived from the operation of the roads of the lessor and lessee companies considered as one system. The lessee company, at the time of filing its acceptance aforesaid, shall also file in the same offices a bond to the people of the state, executed in duplicate by it and a surety company authorized by law to act as surety on bonds and undertakings, in the penal sum of fifty thousand dollars, and conditioned for the faithful payment annually of the total percentage aforesaid, and such bond shall be deemed to be a full compliance with the condition for a bond or undertaking required by this section to be provided for in the conditions of the consent of the local authorities

and shall supersede any such bond or undertaking theretofore given. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section ninety-five of this chapter, for the purposes, at the times, in the manner and upon the conditions set forth in such section. The provisions of this section as now amended shall apply to all cities of the first class, but nothing herein contained shall be construed as superseding, repealing or modifying any provision of the charter of any city, village or town, nor as modifying or affecting the terms of a certain contract bearing date January first, eighteen hundred and ninety-two, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in such contract, except that the provisions of this act as amended, which continue and confirm the consents of local authorities shall apply to street surface railroads in the city of Buffalo, as well as in other cities of the first-class. This section shall not modify or affect any contract heretofore entered into between a street surface railroad

corporation and any city of the third class, town or village regulating the payment of percentages or paving of streets, and any city of the third class, town or village, is hereby authorized to enter into any such form of contract with any street surface railroad corporation, and any such contract heretofore entered into is hereby ratified and confirmed. The local authorities may, in their discretion, make their consent to depend upon any further conditions respecting other or further security, or deposit, suitable to secure the construction, completion and operation of the railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed and respecting the grouping of streets, avenues and highways into one route, or into several routes, for the purpose of a single sale of the franchise, right or privilege for all the routes collectively, or of the separate sale for each route or street, as said local authorities may think expedient and respecting the payment of the percentage agreed to be paid at the sale upon all the lines operated by the successful bidder within the city and respecting any matter involved in or affecting the computation of percentage payments and respecting the use of the railroads to be constructed under the consent by any other company and respecting the interchange of traffic and division of fares between the company operating such railroads and any other company, and respecting the application of any provision herein contained as to carriage of passengers for single fare and the division of gross receipts and the payment of percentages to the line leased or operated under contract by the applicant for an extension, and also respecting any other matter concerning which, in their judgment, further conditions would be for the public interest. Any and all consents, sales and proceedings heretofore granted, made or taken in substantial compliance with the provisions of this section, as now last amended, are hereby approved, ratified and confirmed, and any purchaser or successor to or transferee of the rights of the purchaser of any right or privilege heretofore sold substantially in accordance with the provisions of this section as now amended, is authorized



to acquire the requisite consents of property owners, or, in lieu thereof, determinations by the appellate division of the supreme court, and to proceed with the construction of its road, at any time within three years hereafter.

Thus amended by chap. 494, Laws of 1901.

See section 77, Greater New York Charter; cities of the second class act; *post*.

#### Proceedings if property owners do not consent.

§ 94. If the consent of property owners required by any provision of this article can not be obtained, the corporation failing to obtain such consents may apply to any general term of the supreme court held in the department in which it is proposed to construct its road for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. Notice of such application must, at least ten days prior thereto, be served, personally, upon each non-consenting property owner by delivering the same to the person to whom such property is assessed upon such assessment-roll or by duly mailing the same, properly folded and directed, to such property owner at his post-office address with the postage prepaid thereon. If the person upon whom service is to be made is unknown, or his residence and post-office address are unknown and cannot by reasonable diligence be ascertained, service of such notice may be made by publishing the same in such newspaper of the county as the court may direct, at least once a week for two successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons, who shall act as commissioners, and who shall, within ten days after their appointment, cause public notice to be given of their first meeting in the manner directed by the court, and may adjourn from time to time, until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given; and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly before such commissioners. After a public hearing of all parties interested, the commissioners

shall determine whether such railroad ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to the general term, within sixty days after appointment, unless the court, or a judge thereof, for good cause shown, shall extend such time; and their determination that such road ought to be constructed and operated, confirmed by such court, shall be taken in lieu of the consent of the property owners hereinbefore required. The commissioners shall each receive ten dollars for each day spent in the performance of their duties and their necessary expenses and disbursements, which shall be paid by the corporation applying for their appointment. Thus amended by chap. 676, Laws of 1892.

**Percentage of gross receipts to be paid in cities or villages;  
report of officers.**

§ 95. Every corporation building or operating a railroad or branch or extension thereof, under the provisions of this article, or of chapter 252 of the laws of 1884, within any city of the state having a population of 1,200,000 or more, shall, for and during the first five years after the commencement of the operation of any portion of its railroad annually, on November first, pay into the treasury of the city in which its road is located, to the credit of the sinking fund thereof, three per cent of its gross receipts for and during the year ending September thirtieth next preceding; and after the expiration of such five years, make a like annual payment into the treasury of the city to the credit of the same fund, of five per cent of its gross receipts. If a street surface railroad corporation existing and operating any such railroad in any such city on May 6, 1884, shall have thereafter extended its tracks or constructed branches therefrom, and shall operate such branches or extensions under the provisions of chapter 252 of the laws of 1884, or of this article, such corporation shall pay such percentages only upon such portion of its gross receipts as shall bear the same proportion to its whole gross receipts as the length of such extension or branches shall bear to the entire length of its line. In any other incorporated

city or village the local authorities shall have the right to require, as a condition to their consent to the construction, operation or extension of a railroad under the provisions of this article, the payment annually of such percentage of gross receipts, not exceeding three per cent, into the treasury of the city or village as they may deem proper. In case of extension the amount to be paid shall be ascertained in the manner heretofore provided. The corporation failing to pay such percentage of its gross earnings shall, after November first, pay in addition thereto five per cent a month on such percentage until paid. The president and treasurer of any corporation required by the provisions of this article to make a payment annually upon its gross receipts shall, on or before November first in each year make a verified report to the comptroller or chief fiscal officer of the city of the gross amount of its receipts for the year ending September thirtieth, next preceding, and the books of such corporation shall be open to inspection and examination by such comptroller or officer, or his duly appointed agent, for the purpose of ascertaining the correctness of its report as to its gross receipts. The corporate rights, privileges and franchises acquired under this article or such chapter by any corporation, which shall fail to comply with all the provisions of this section, shall be forfeited to the people of the state, and upon judgment of forfeiture rendered in an action brought in the name of the people by the attorney-general, shall cease and determine.

Thus amended by chap. 676, Laws of 1892.

See Greater New York Charter; cities of the second class act; chap. 637, Laws of 1901, *post*.

**Extension of route over rivers; terminus in other counties; when property owners withhold consent; supreme court may appoint Commissioners.**

§ 96. Any street railroad in operation in this state, which shall, by a two-thirds vote of its directors, decide to extend the route of its road, so as to cross a river over and by any bridge now or hereafter constructed under the provisions of any law of this state, may so extend their route over and across such

bridge upon such terms as may be mutually agreed upon between it and such bridge company, and may locate the terminus of their road in the county adjoining the one in which their road is now located and in operation, upon first obtaining the consent of such bridge company or its lessees, and the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad, or in case the consent of such property owners cannot be obtained the appellate division of the supreme court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine after a hearing of all parties interested, whether such railroad ought to be constructed, or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Whenever a terminus of any public viaduct, bridge or bridges, or public viaduct connected with any bridge or bridges, heretofore or hereafter constructed in and owned and maintained by any city of the first class, or town adjoining the same, is or shall be located at or adjacent to or within one-half mile of the route of any existing street surface railroad, the corporation owning or operating such railroad may, irrespective of any provisions otherwise applicable thereto contained in any general or local act, upon obtaining the consent of the local authorities and property owners as above provided, and upon complying with the provisions of the railroad law applicable thereto, extend its road or route and construct and operate its railroad, to, upon and across such viaduct, bridge or bridges and approaches thereto for the purpose of connecting with another railroad route not more than one-half mile distant from such bridge or viaduct so as to afford a continuous ride for one fare, subject to the provisions of the railroad law, or for the purpose of reaching the depot, station or terminus of another railroad not more than one-half mile distant from such bridge or viaduct. This section shall not apply to any bridge over the Hudson or East rivers in the counties of New York and Kings,

nor to any bridge or viaduct constructed under the provisions of any so-called grade crossing law.

Thus amended by chap. 419, Laws of 1901.

See sections 60, 61 and 62, Railroad Law, *ante*.

#### **Use of tracks of other roads.**

§ 97. Any railroad corporation in this state, whose cars are run and operated by horses or other motive power, authorized by this article, upon the surface of the street, excepting in the city and county of New York, may, for the purpose of enabling it to connect with and run and operate its cars between its tracks, and a depot or car-house owned by it, run upon, intersect, and use, for not exceeding five hundred feet, the tracks of any other railroad corporation, the cars of which are run and operated in like manner with the necessary connections and switches for the proper working and accommodation of the cars upon such tracks, and in connection with such depot or car-house, upon paying therefor such compensation as it may agree upon with the corporation owning the tracks to be so run upon, intersected, and used; and in case such corporations cannot agree upon the amount of such compensation, the same shall be ascertained and determined in the manner prescribed in the condemnation law.

#### **Repair of streets; rate of speed; removal of ice and snow.**

§ 98. Every street surface railroad corporation so long as it shall continue to use any of its tracks in any street, avenue or public place in any city or village shall have and keep in permanent repair that portion of such street, avenue or public place between its tracks, the rails of its tracks, and two feet in width outside of its tracks, under the supervision of the proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe. In case of the neglect of any corporation to make pavements or repairs after the expiration of thirty days notice to do so, the local authorities may make the same at the expense of such corporation, and such authorities may make such reasonable regulations and ordinances as to the rate of speed, mode of use of tracks, and removal of ice and snow, as the interests or convenience of the

public may require. A corporation whose agents or servants willfully or negligently violate such an ordinance or regulation, shall be liable to such city or village for a penalty not exceeding five hundred dollars to be specified in such ordinance or regulation.

Thus amended by chap. 676, Laws of 1892.

See chap. 182, Laws of 1898, *post*.

See 182 N. Y., 99.

#### Within what time road to be built.

§ 99. In case any such corporation shall not commence the construction of its road, or of any extension or branch thereof, within one year after the consent of the local authorities and property owners or the determination of the appellate division of the supreme court as herein required, shall have been given or renewed, and shall not complete the same within three years after such consents, or determination shall have been obtained, its rights, privileges and franchises in respect of such railroad or extension or branch, as the case may be, may be forfeited. If the performance of any act required by the railroad law or any prior acts within the times therein prescribed, is hindered, delayed or prevented by legal proceedings in any court, such court may also extend such time for such period as the court shall deem proper or if the performance of any act required by said article within the times therein prescribed is hindered, delayed or prevented by works of public improvement, or from any other or different cause, not within the control of the corporation upon which such requirement is imposed, the time for the performance of such act is hereby and shall be deemed to be extended for the period covered by such hindrance, delay or prevention. The time for compliance with any requirement in this or any former act, by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad and which has prior to the passage of this act obtained or shall prior to June thirtieth, nineteen hundred and three obtain such consents or determination is hereby extended until June thirtieth, nineteen hundred and four.

Thus amended by chap. 209, Laws of 1902.

See 106 App. Div., 240.

See section 5, Railroad Law, *ante*.

**Motive power.**

§ 100. Any street surface railroad may operate any portion of its road by animal or horse power, or by cable, electricity, or any power other than locomotive steam power, which said locomotive steam power is primarily generated by the locomotive propelling the cars, and in the use of which either escaping steam or smoke is visible, which may be approved by the state board of railroad commissioners, and consented to by the owners of one-half of the property bounded on that portion of the railroad, with respect to which a change of motive power is proposed; and if the consent of such property owners cannot be obtained, the determination of three disinterested commissioners, appointed by the appellate division of the supreme court of the department in which such railroad is located, in favor of such motive power, confirmed by the court, shall be taken in lieu of the consent of the property owners. The consent of the property owners shall be obtained and the proceedings for the appointment and the determination of the commissioners and the confirmation of their report shall be conducted in the manner prescribed in sections ninety-one and ninety-four of this article, so far as the same can properly be made applicable thereto. Any railroad corporation making a change in its motive power under this section, may make any changes in the construction of its road or roadbed or other property rendered necessary by the change in its motive power. Where a street surface railroad in the counties of Herkimer and Hamilton is located wholly outside the limits of an incorporated city or village, such railroad may, with the approval of the state board of railroad commissioners be operated by locomotive steam power, provided that such steam power is generated by oil from and including April fifteenth to and including November thirtieth, and by either oil or coal from and including December first to and including April fourteenth.

Thus amended by chap. 553, Laws of 1901.

See chap. 597, Laws of 1898, *post*.

**Rate of fare.**

§ 101. No corporation constructing and operating a railroad under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, shall charge any passenger more than five cents for one continuous ride from any point on its road, or on any road, line or branch operated by it, or under its control, to any other point thereof, or any connecting branch thereof, within the limits of any incorporated city or village. Not more than one fare shall be charged within the limits of any such city or village, for passage over the main line of road and any branch or extension thereof if the right to construct such branch or extension shall have been acquired under the provisions of such chapter or of this article; except that in any city of the third class, or incorporated village, it shall be lawful for such corporation to charge and collect as a maximum rate of fare for each passenger, ten cents, where such passenger is carried in a car which overcomes an elevation of at least four hundred and fifty feet within a distance of one and a half miles. This section shall not apply to any part of any road constructed prior to May six, eighteen hundred and eighty-four, and then in operation, unless the corporation owning the same shall have acquired the right to extend such road, or to construct branches thereof under such chapter, or shall acquire such right under the provisions of this article, in which event its rate of fare shall not exceed its authorized rate prior to such extension. The legislature expressly reserves the right to regulate and reduce the rate of fare on any railroad constructed and operated wholly or in part under such chapter or under the provisions of this article.

Thus amended by chap. 688, Laws of 1897.

**Construction of road in street where other road is built.**

§ 102. No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or



shall be lawfully constructed, except for necessary crossings, or, in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants over any bridges, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and if in a city having a population of less than thirty-five thousand inhabitants, except Long Island City, for a distance not exceeding fifteen hundred feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants, shall have the right to lay its tracks upon, and run over and use any bridges used wholly or in part as a foot-bridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed or operated as an independent railroad, or to connect said railroad with a ferry, or with another existing railroad, and that the public convenience requires the same, in which event the right to use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad commissioners in cases where the corporations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of the tracks for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of a unanimous vote of the stockholders voting at a special meeting called for that purpose by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and serving upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the

bonds of any other street surface railroad corporation whose road is fully or partly in the same city or town or adjacent cities or towns.

Thus amended by chap. 693, Laws of 1894.

#### Abandonment of part of route.

§ 103. Any street surface railroad corporation may declare any portion of its route which it may deem no longer necessary for the successful operation of its road and convenience of the public to be relinquished or abandoned. Such declaration of abandonment must be adopted by the board of directors of the corporation under its seal, which shall be submitted to the stockholders thereof at a meeting called and conducted in the same manner as required by law for meetings of stockholders for the approval of leases by railroad corporations for the use of their respective roads. If the stockholders shall, at such meeting, ratify and adopt such declaration of abandonment, the secretary of the company shall so certify under the seal of the corporation, upon such declaration. Such declaration shall then be submitted to the board of railroad commissioners for its approval, and if approved by such board, such approval shall be indorsed \*therein or annexed thereto and the declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing, such portion of the route designated in the declaration shall be deemed to be abandoned.

Thus amended by chap. 478, Laws of 1900.

#### Contracting corporations to carry for one fare; penalty.

§ 104. Every such corporation entering into such contract shall carry or permit any other party thereto to carry between any two points on the railroads or portions thereof embraced in such contract any passenger desiring to make one continuous trip between such points for one single fare, not higher than the fare lawfully chargeable by either of such corporations for an

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\*So in the original.

adult passenger. Every such corporation shall upon demand, and without extra charge, give to each passenger paying one single fare a transfer, entitling such passenger to one continuous trip to any point or portion of any railroad embraced in such contract, to the end that the public convenience may be promoted by the operation of the railroads embraced in such contract substantially as a single railroad with a single rate of fare. For every refusal to comply with the requirements of this section the corporation so refusing shall forfeit fifty dollars to the aggrieved party. The provisions of this section shall only apply to railroads wholly within the limits of any one incorporated city or village.

Thus amended by chap. 676, Laws of 1892.

See 179 N. Y., 450, and other decisions of courts on this section.

#### **Effect of dissolution of charter as to consents.**

§ 105. Whenever any street surface railroad corporation shall have been dissolved or annulled, or its charter repealed by an act of the legislature, the consent of owners of property bounded on, and the consent of the local authorities having the control of that portion of a street or highway upon which the railroad of such corporation shall have been theretofore constructed and operated, and the order of the general term confirming the report of any commissioner that such railroad ought to be constructed or operated, shall not, nor shall either thereof, be deemed to be in any way impaired, revoked, terminated or otherwise affected by such act of dissolution, annulment or repeal, but the same and each thereof shall continue in full force, efficacy and being. The right to the further enjoyment and to the use thereof, subsequent to such act of dissolution, annulment or repeal, and of all the powers, privileges and benefits therein or thereby created, shall be sold at public auction by the local authorities within whose jurisdiction such railroad shall be, in the same manner as is provided in section ninety-three of this article. When such sale shall have been so made, the purchaser thereat shall have the right to the further enjoyment and use of such consents and

orders, and of each thereof, and of all the powers, privileges and benefits therein or thereby created, in like manner as if such purchaser had been originally named in such consents, reports and orders; if such purchaser shall be otherwise authorized by law to construct, maintain and operate a street surface railroad within the municipality within which such railroad shall be.

Thus amended by chap. 676, Laws of 1892.

**Corporate rights saved in case of failure to complete road; right to operate branches; conditions; former consents ratified; limitations.**

§ 106. The corporate existence of and powers of every street surface railroad corporation, which has completed a railroad upon the greater portion of the route designated in its certificate of incorporation, within ten years from the date of filing such certificate in the office of the secretary of state, and which has operated such completed portion of its railroad continuously for a period of five years last past, and is now operating the same, shall continue with like force and effect, as though it had in all respects complied with the provisions of law with reference to the time when it should have fully completed its road. Every such corporation shall have the right to operate any extensions and branches of its railroad, now constructed and operated by it, which have been so constructed and operated by it, for a period of ten years last past, with like force and effect, as though the route of such extensions and branches were designated in its certificate of incorporation. But every such street railroad corporation is authorized to operate such railroad and any extensions or branches thereof, upon condition that it has heretofore, or shall hereafter, obtain the consent of the local authorities having the control of that portion of the streets, avenues or highways included in such railroad, or any extension or branch thereof, to the construction and operation of the same, and also upon the condition that it has heretofore or shall hereafter first obtain the consent of the owners of one-half in value of the property bounded on the portion of the streets, avenues or highways

included in the route of such railroad, or any extensions or branches thereof, to the construction and operation of the same, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court of the department in which such railroad or any extension or branch thereof is located, may, upon application, appoint three commissioners who shall determine, after a hearing of all the parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. If any street surface railroad corporation shall have made and filed a statement or statements of proposed extensions or branches embracing a line from the boundary of a city or village to the boundary of another city or village generally parallel with the route specified in its certificate of incorporation and generally distant not more than one-half mile therefrom, and shall have made and filed an agreement of consolidation with some other street surface railroad corporation formed to build a street railroad upon a route continuous or connecting with one or more of the routes described in such statement or statements of proposed extensions or branches, and thereafter there shall have been constructed and operated for a period of four years a street surface railroad from such city or village to such other city or village upon a line embraced in any such proposed extensions or branches, such consolidated corporation may relinquish and abandon any unconstructed route or unconstructed portions of route specified in the certificate of incorporation or in any statements of proposed extensions or branches of such first-mentioned corporation by filing in the office of the secretary of state a copy of a resolution of the board of directors of such consolidated corporation certified by its president and secretary, declaring such unconstructed route or unconstructed portions of route relinquished and abandoned, and thereupon the corporate rights, powers and franchises of such consolidated corporation shall be and continue the same as though the certificate of incorporation of such constituent corporation had specified the con-

structed and not the unconstructed portions of such route and proposed extensions and branches. All consents heretofore given, or grants made by local authorities having the control of the portion of any street, avenue, or highway included in the route of such railroad, or any extensions or branches thereof, to any such street surface railroad corporation, are hereby ratified and confirmed and declared valid. This section shall be applicable to any corporations whose lines are wholly within any towns, cities or villages having less than twenty thousand inhabitants. This section shall not apply to or affect any railroad corporation in the city of New York; nor any special grant made to or authority conferred upon any street surface railroad corporation by any law of this state; nor any pending litigation; nor shall it impair existing rights, privileges or franchises of any street surface railroad corporation.

Thus amended by chap. 198, Laws of 1900.

See chap. 604, Laws of 1892; also, chap. 679, Laws of 1893, *post*.

#### **When sand and salt may be used on tracks.**

§ 107. The owner or operator of any street surface railroad in cities of this state, may place upon the space between the rails, and upon the rails of such road sand in sufficient quantities to prevent the horses traveling thereon from slipping, and to enable cars operated by mechanical, or electrical appliances to be safely and properly operated. The owner or operator of any street surface railroad in cities of this state may use salt in necessary quantities, upon the rails of all the switches, curves, turnouts and crossovers, between the first day of November of each year and the first day of May following, for the removal of snow and ice therefrom and to prevent the same from freezing. The quantity of salt to be used and the manner of applying salt to the rails, to be under the direction of the city officials having charge of the streets of said cities.

Thus amended by chap. 491, Laws of 1899.

See Greater New York Charter.

**Road not to be constructed upon ground occupied by public buildings or in public parks.**

§ 108. No street surface railroad shall be constructed or extended upon ground occupied by buildings belonging to any town, city, county or to the state, or to the United States, or in public parks, except in tunnels to be approved by the local authorities having control of such parks. Provided however that the commissioners of the state reservation at Niagara, by and with the consent of the commissioners of the land office, may construct, without expense to the state, street railroad tracks upon and along that part of the riverway, so called, between Falls and Niagara streets, in the city of Niagara Falls, and in their discretion may grant revokable licenses to street surface railroad companies to use such tracks upon such terms as said commissioners may prescribe.

Thus amended by chap. 710, Laws of 1899.

**Center-bearing rails prohibited.**

§ 109. No street surface railroad corporation shall hereafter lay down in the streets of any incorporated city or village of this state what are known as "center-bearing" rails; but in all cases, whether in laying new track or in replacing old rails, shall lay down "grooved" or some other kind of rail not "center-bearing" approved by the local authorities. Such grooved or other rail shall be of such shape and so laid as to permit the paving-stones to come in close contact with the projection which serves to guide the flange to the car wheel. Where in any city, the duty of repairing and repaving streets, as distinguished from the authorization of such paving, repairing and repaving, is by law vested in any local authority other than the common council of such city, such other local authority shall be the local authority referred to in this section.

Thus amended by chap. 676, Laws of 1892.

**Right to cross bridge substituted for a bridge crossed for five years.**

§ 110. Should any street surface railroad company have crossed any bridge as a part of its route for a period of more than five years and should any other bridge be substituted therefor at any time, such company shall have the right to cross such substituted bridge and to lay and use railway tracks thereon for the transit of its cars and to make all changes and extensions of its route subject to all the provisions of this act, as the convenient operation of its cars and public convenience may require.

Added by chap. 676, Laws of 1892.

**Protection of employees.**

§ 111. Every corporation operating a street surface railroad in this state, except such as operate a railroad or railroads either in the borough of Manhattan or Brooklyn, in the city of New York, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad which extends in or between towns or outside of city limits, during the months of December, January, February and March, except cars attached to the rear of other cars, to be enclosed from the fronts of the platforms to the fronts of the hoods, so as to afford protection to any person stationed by such corporation on such platforms to perform duties in connection with the operation of such cars. Every corporation or person using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated, to be collected in an action brought by the attorney-general and to be paid to the treasurer of the state of New York, or in a suit by the attorney of the municipality in which the violation of the provision of this act occurs, to be paid in the treasury of such municipality.

Added by chap. 325, Laws of 1903; see chap. 325, following.



## CHAP. 325, LAWS OF 1903.

AN ACT to amend the railroad law, in relation to the protection of certain employees of street railroads.

SECTION 1. Article four of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, entitled "An act in relation to railroads, constituting chapter thirty-nine of the general laws," is hereby amended by adding thereto a new section to be section one hundred and eleven, and to read as follows :

• • • • •  
See section 111 of Railroad Law, above.

§ 2. All street surface railroad passenger cars hereafter purchased, built or rebuilt and operated in the state of New York on and after the passage of this act, except those owned by any company operating either in the borough of Manhattan or Brooklyn, in the city of New York shall be constructed in accordance with the provisions of section one of this act.

§ 3. This act shall take effect December first, nineteen hundred and four. Except that where the cars of any corporation affected by section one of this act are operated wholly in cities other than the boroughs of Manhattan or Brooklyn in the city of New York, the cars belonging to the corporations so operated shall be equipped with the enclosures provided for in section one of this act as follows, viz.: One-third thereof before December first, nineteen hundred and four, one-third thereof after December first, nineteen hundred and four and before December first, nineteen hundred and five, and the remaining one-third thereof after December first, nineteen hundred and five, and before December first, nineteen hundred and six.

### Protection to employes.

§ 111a. Every corporation operating a street surface railroad in the counties of Albany and Rensselaer shall cause the front and rear platforms of every car propelled by electricity, cable or compressed air, during the months of December, January, February and March, except cars attached to the rear of other cars, to be enclosed from the front and at least one side of the platform to the hood, so as to afford protection to any person stationed by such corporation or person on such platforms to perform duties in connection with the operation of such cars. Platforms on cars on such street surface railroads used more than one mile outside the limits of a city shall be completely enclosed from platform to hood. Every corporation using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated to be collected by the people to the use of the poor of the county in which such corporation has its principal office, in an action brought by the

attorney-general or the district attorney of such county. The supreme court may, on the application of a citizen, direct the district attorney to bring such action.

Added by chap. 426, Laws of 1903, taking effect Sept. 1, 1904.

#### **Protection of employees in the counties of Kings and Queens.**

\*§ 112. Every corporation operating a street surface railroad in the counties of Kings or Queens, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad during the months of December, January, February and March, except cars attached to the rear of other cars, to be enclosed from the fronts of the platforms to the fronts of the hoods so as to afford protection to any person stationed by such corporation on such platforms to perform duties connected with the operation of such cars. Every corporation or person using and operating a car in violation of such section shall be liable to a penalty of twenty-five dollars per day for each car used and operated, to be collected in an action brought by the attorney-general and to be paid to the treasurer of the city of New York, or in a suit by the district attorney of the counties of Kings or Queens to be paid into the treasury of the city of New York. One-third of the cars operated by any corporation in either of the above named counties shall be equipped with the enclosures provided for in section one of this act on or before December first, nineteen hundred and five, one-third thereof after December first, nineteen hundred and five, and before December first, nineteen hundred and six, and the remaining one-third thereof after December first, nineteen hundred and six, and before December first, nineteen hundred and seven.

Added by chap. 453, Laws of 1905.

\*§ 112. The board of estimate and apportionment, or if such board do not exist, the local authorities which have power to make appropriation of moneys to be raised by taxation, in any city of the first class, shall have the power in their discretion, to enter into a contract or contracts on behalf of the city with any

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\*So in original.

railroad corporation or corporations owning or operating street surface railroads or other railroads in such city, for the purpose of adjusting any or all differences now existing between such corporation or corporations and such city with respect to car license fees, percentages upon gross earnings, rentals and any other payments, other than taxes upon real and personal property and capital stock, payable or claimed to be payable to the city under existing acts of the legislature, municipal ordinances, grants by, or contracts with, the municipal authorities or otherwise; and any such contract may provide for the payment of an annual amount to be ascertained as in such contract provided in lieu of any or all payments of any of the classes hereinbefore mentioned, other than taxes. Any such contract which shall be with a corporation operating lines of railroad by lease may provide for an annual payment, to be ascertained as in such contract provided, which shall be in lieu of any or all of the payments of any or all of said classes, other than taxes upon real and personal property and capital stock, which would otherwise be payable in respect of the leased lines so long as the lease or leases thereof shall continue. The annual payments provided for in any contract made under the authority of this act shall, so long as such contract is in force, supersede the payments which would otherwise be payable by the corporation or corporations making such contract and in lieu of which the annual payments provided for in such contract are substituted. Any contract made hereunder may, with the approval of the municipal authorities by whom the contract was made or their successors in office, be modified from time to time by the parties thereto for the purpose of meeting changed conditions. No contract shall be made or modified hereunder without the written consent and approval of the mayor and of the comptroller or other chief financial officer of the city.

Added by chap. 651, Laws of 1905.

## ARTICLE V.

## \*OTHER RAILROADS IN CITIES AND COUNTIES.

- SECTION 120. Application for railway; commissioners.
- 121. Oath and bond of commissioners.
  - 122. First meeting of commissioners.
  - 123. Determination of necessity of railroad and route.
  - 124. Adoption of plans and terms upon which road shall be built.
  - 125. Appraisal of damages and deposit of money as security.
  - 126. Shall prepare certificate of incorporation; proviso as to forfeiture.
  - 127. Organization.
  - 128. Commissioners to deliver certificate; affidavit of directors.
  - 129. Powers.
  - 130. Crossing of horse railroad track.
  - 131. Where route coincides with another route.
  - 132. Commissioners; to transfer plans, etc.
  - 133. Commissioners to file report; confirmation thereof.
  - 134. Pay of commissioners.
  - 135. Quorum; term of office; removal; vacancies in board of commissioners.
  - 136. Abandonment or change of route; new commissioners; their power and proceedings.
  - 137. Increased deposit; when and how required.
  - 138. Trains to come to full stop, etc.
  - 139. Gates or vestibule doors.
  - 140. Penalty for violation of this article.
  - 141. Sections to be printed and posted.
  - 142. Extension of time.

**Application for railway; commissioners.**

§ 120. Upon the application of at least fifty reputable householders and taxpayers of any county or city, verified upon oath before a justice of the supreme court, that there is need in said county or city of a steam railway in the streets, avenues and public places thereof for the transportation of passengers, mails or freight, the board of supervisors of such county may, within thirty days thereafter by resolution, approve of the application, and authorize its presentation to the supreme court, and if the railway is to be built wholly within the limits of a city, upon the application of a like number of householders and taxpayers

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\*See Rapid Transit Act, also chap. 294, Laws of 1891, *post*.

of the city to the mayor thereof, such mayor may, within thirty days thereafter, indorse upon the application his approval and direction that it may be presented to the supreme court, and if the railway is to be built, partly within the limits of a city and partly without, such application shall be approved, both by the mayor of the city and the board of supervisors of the county, and its presentation to the supreme court authorized by them, and upon the presentation of such application so approved and authorized to a special term of the supreme court, held in the district where such railway is to be built, or some part thereof, the court may appoint five commissioners, residents of the city if the railway is to be built wholly within the city, and of the county, if it is to be built wholly or partly outside of the limits of a city, to determine the necessity of such railroad, the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof and all the matters lawfully submitted to them, and discharge the duties imposed upon them by law.

#### Oath and bond of commissioners.

§ 121. Within ten days after his appointment and before entering upon the discharge of any of the duties of his office, each commissioner shall take and subscribe the constitutional oath of office, which shall be filed in the office of the clerk of the county and shall execute a bond to the people of the state in the penal sum of twenty-five thousand dollars, with two or more sureties, to be approved by a justice of the supreme court of the department in which the railway is to be built and conditioned for the faithful performance of the duties of the office, which bond shall be filed in the office of the clerk of the county.

#### First meeting of commissioners.

§ 122. Within fifteen days after their appointment, the commissioners shall meet in some convenient place in the county or city and organize themselves as a board with appropriate officers.

**Determination of necessity of railroad and route.**

§ 123. The commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railroad, and if they find it to be necessary, they shall, within sixty days after such organization, fix and determine the route therefor, and shall have the exclusive power to locate such route, over, under, through or across the streets, avenues, places or lands in such county or city, and to provide for the connection or junction with any other railway or bridge, if the consent of the owners of one-half in value of the property bounded on and the consent of the local authorities having control of that portion of a street or highway, upon which it is proposed to construct or operate such railway have been first obtained. If the consent of such property owners can not be obtained, the determination of three commissioners appointed by the general term of the supreme court of the department where the railroad is to be constructed, made after due hearing of all parties interested, and confirmed by the court, that such railway ought to be constructed and operated, may be taken in lieu of the consent of such property owners. No such railway shall be located in or upon such portion of any street, avenue, place or lands in such county as are now occupied by an elevated or underground railway or in which such a railway has already been authorized by law to be so located and constructed, or which are contained in public parks, or occupied by buildings belonging to the county or the state or United States, or in or upon the following streets, avenues and public places, viz.: Broadway, Fifth avenue, Fourth avenue above Forty-second street, in the city of New York; Debevoise place, Irving place, Lefferts place, those portions of Grand, Classon and Franklin avenues and Dowling street lying between the southerly line of Lexington avenue and the northerly line of Atlantic avenue, that portion of Classon avenue lying between the northerly line of Lexington avenue and the southerly line of Park avenue, and that portion of Washington avenue lying between Park and Atlantic avenues in the city of Brooklyn; and that portion of the city of Buffalo lying between Michigan and Main streets,

but such railway may be located and constructed across such excepted streets, avenues and places at their intersection only with other streets, avenues and places.

Thus amended by chap. 676, Laws of 1892.

**Adoption of plans, and terms upon which road shall be built.**

§ 124. The commissioners by such public notice, and under such conditions, and with such inducements as they may prescribe, shall invite a submission of plans for the construction and operation of such railway, and shall meet at a time and place in such notice named, not more than ninety days after their organization, and decide upon the plans for the construction thereof, with the necessary supports, turnouts, switches, sidings, connections, landing-places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, or other requisite appliances, upon the route or location determined upon by them. They shall, upon notice to the local authorities, and after hearing all parties interested, fix and determine what compensation, if any, in a gross sum, or in a certain percentage of receipts, shall annually be paid to the local authorities by the corporation formed for the purpose of constructing, maintaining and operating such railway for public use in the conveyance of persons and property, for the use and occupation by the corporation of the streets, avenues and highways in and upon which its railway is to be constructed, and the time when such railway, or a portion thereof, shall be constructed and ready for operation, and the maximum rates to be paid for transportation and conveyance thereon, and the hours during which special cars or trains shall be run at reduced rates of fare; and the amount of the capital stock of such corporation, and the number of shares into which it shall be divided, and the percentage thereof to be paid in cash on subscribing for such shares.

The commissioners may select two or more routes, upon one of which such railway may be constructed and operated; and the local authorities may consent to the construction and operation of such railway upon one or more of such routes, or parts thereof; and the commissioners shall have power to change and

readopt routes and plans for the construction and operation of such railway, after they have been submitted to the local authorities, in cases where such authorities may recommend such changes, or may not be willing to consent to the construction or operation of the railway, upon the routes and plans adopted, unless such changes are made therein.

Thus amended by chap. 676, Laws of 1892. See statutes published herein as to abandonment of route and extension and limitation of time in which to build railroads.

#### Appraisal of damages and deposit of money as security.

§ 125. The commissioners shall, within one hundred and ten days after their organization, ascertain and determine the aggregate pecuniary damage arising from the diminution in the value of the property bounded on that portion of such street or streets, highway or highways, upon which it is proposed to construct and operate such railway to be caused by the construction and operation thereof. For that purpose they shall view the several parcels of real property so bounded, and shall appraise separately the pecuniary damages arising from such diminution in value of each parcel thereof, and for the purposes of such appraisal they shall give notice of the time and place, when and where they will meet to hear the owners, or persons interested in such real property, which notice shall be published for at least ten days consecutively in at least two newspapers in the county where such railway is to be constructed, and shall take such material testimony upon the probable diminution in value of any or all such parcels to be so caused as may be offered by or in behalf of any person or party interested therein, and the aggregate sum of the amounts so appraised and determined by them shall be the aggregate pecuniary damage required to be ascertained and determined as above provided. No corporation which shall hereafter be organized under this article shall enter upon any street, highway or lane therein, until it shall first have deposited with some trust company, to be designated by the mayor of the city within which it is proposed to construct the railway or any part thereof, and by the board of supervisors,



when the road does not lie wholly within a city, a sum of money equal to the amount so ascertained and determined by the commissioners to be the aggregate pecuniary damage to such property within the city, or within the county outside of any city, or shall have secured the payment of such amount by depositing with such trust company negotiable securities, equivalent at their par and actual value to such aggregate amount, and approved by the mayor of the city in which such road is wholly or in part located, and by the county treasurer of the county if the road is located wholly or in part outside of the limits of such city. The court may accept in lieu of the deposit of money or securities herein required the bond of the corporation, with two or more sureties, to be approved by the court, to the effect that the corporation before constructing or operating its railway in front of any premises, shall pay to the owner of the real property all the damages sustained, or which will be sustained by him, as fixed and determined by such commissioners, and the costs allowed, if any. Such bond shall be in a sum double the amount of such damages, and the sureties shall justify in the aggregate to an amount equal to the amount of such bond. Such corporation shall also, at the same time, deposit with such trust company or with the county treasurer, as the commissioners may direct, the sum of five thousand dollars in cash, for the payment of the expense of apportioning and distributing such fund. Unless such moneys or securities shall be deposited by such corporation within one year after it shall have obtained the consent of the local authorities, and of the property owners, or the confirmation by the general term of the supreme court, of the determination of three commissioners in lieu thereof, and in the case of a corporation heretofore organized within one year after it shall have obtained the confirmation by the general term of the supreme court of the report of three commissioners in lieu of the consent of property owners, or within one year after the commissioners appointed to ascertain and determine the aggregate pecuniary damages as provided in this article, shall have made their report, then such corporation shall be deemed not

to have accepted the franchises granted. Where the commissioners shall fix and determine different periods of time within which different sections of such railway shall be constructed and ready for operation, they shall ascertain, determine, and report separately the aggregate pecuniary damage to property bounded upon that portion of such street or streets upon which each of such sections is located. Upon the deposit by the corporation as above provided of moneys or securities equivalent to the aggregate pecuniary damage to be sustained by any one of such sections, or of any bond given in lieu thereof, it shall immediately be vested with the right and privilege to construct its railway through such section.

Thus amended by chap. 676, Laws of 1892.

**Shall prepare certificate of incorporation; proviso as to forfeiture.**

§ 126. The commissioners shall prepare an appropriate certificate of incorporation for the corporation in the last section mentioned in which shall be set forth and embodied, as component parts thereof, the several conditions, requirements and particulars by such commissioners determined pursuant to the provisions of this article, and which shall also provide for the release and forfeiture to the supervisors of the county, or if the road is to be constructed wholly or partly within a city, to such city, of all rights and franchises acquired by such corporation in case such railway or railways shall not be completed within the time and upon the conditions therein provided; and the commissioners shall thereupon and within one hundred and twenty days after their organization cause a suitable book of subscription to the capital stock of such corporation, to be opened pursuant to due public notice at a banking office in such county or city. A failure by any corporation heretofore or hereafter organized under this article to complete its railway within the time limited in and by its certificate of incorporation shall only work a forfeiture of the franchises of such corporation with respect to that portion of its route which such corporation shall have failed to complete, and shall not affect the rights and franchises of

such corporation to construct and operate such part of its railway which it shall have completed within the term prescribed by its certificate of incorporation, or as to which the time for completion shall not have expired, notwithstanding anything to the contrary in its certificate of incorporation.

### Organization.

§ 127. Whenever the whole capital stock of such corporation or an amount of such capital stock proportioned to the part of such railway directed by the commissioners to be constructed, shall have been subscribed by not less than fifteen persons, and the fixed percentage of such subscriptions shall have been paid, in cash, the commissioners shall, by written or printed notice of ten days, served personally or by mail, call a meeting of such subscribers for organization, and appoint the inspectors of election to serve thereat. At such meeting, or at any subsequent one to which the same may be adjourned, a majority in number and amount of such subscribers may elect persons, of a number to be theretofore determined by the commissioners not less than nine, who shall be directors for one year of the corporation formed for the purposes of constructing and operating such railway.

### Commissioners to deliver certificate; affidavit of directors.

§ 128. Within ten days after the election of such directors the commissioners shall deliver to them a certificate in duplicate, verified by the oath of three commissioners, before a justice of the supreme court, setting forth the certificate of incorporation and the organization of the corporation for the purposes therein mentioned, and within five days after the reception by them of such certificates, three of the directors so elected shall make affidavit in duplicate that the full amount of stock has been subscribed in good faith to construct, maintain and operate the railway or railways in such certificate of incorporation mentioned, and such directors shall file such affidavits and certificate in the office of the secretary of state, and a duplicate of the same

in the office of the clerk of the county wherein such railway shall be located; and thereupon the persons who have so subscribed such certificate of incorporation and all persons who shall become stockholders in such corporation shall be a corporation by the name specified in such certificate, and be subject to the duties, liabilities and restrictions of such corporations.

#### Powers.

§ 129. Every such corporation shall have power, in addition to the powers conferred by the general and stock corporation laws and by subdivisions two, five and seven of section eight\* of this chapter:

1. To take and convey persons and property on their railroad by the power or force of steam or by any motor other than animal power, and to receive compensation therefor.

2. To enter upon and underneath the several streets, avenues and public places and lands designated by the commissioners, and enter into and upon the soil of the same, to construct, maintain, operate and use in accordance with the plan adopted by the commissioners, a railway upon the route or routes and to the points decided upon and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon such plan and for operating the same; and to make such excavations and openings along the route through which such railways shall be constructed as shall be necessary from time to time. In all cases the surface of the streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and any interference with or change in the water mains, or in the sewers or lamp posts, except such changes as may be made with the concurrence of the proper department or authority shall be avoided; and the use of the streets, avenues, places and lands designated by the commissioners and the right of way through

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\*So in the original.

the same for the purpose of a railway, as herein authorized, shall be considered and is hereby declared to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held. No such corporation shall have the right to acquire the use or occupancy of public parks or squares in any such city or county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction, and no such railway shall be constructed across the track of any steam railway now in actual operation at the grade thereof, nor shall any piers or supports for any elevated railway be erected upon a railway track now actually in use in any street or avenue; and no such corporation shall construct a street surface railroad to run in whole or in part upon the surface of any street or highway under the provisions of this article.

**Crossing of horse railroad track.**

§ 130. Whenever the route selected by the commissioners for the construction of such railway shall intersect, cross or coincide with any horse railway track occupying the surface of the street or avenues, such railway corporation is hereby authorized to remove, for the purpose of constructing its road, the tracks of such horse railway; but the same shall be done in such manner as to interfere as little as possible with their practical operation or working, and upon the construction of such railway, where such removals or changes have been made, the same shall be restored as near as may be to the condition in which they were previous to the construction of such railroad. All such removals and restorations shall be made at the proper cost and charges of such corporation, but no authority is herein given to any such corporation to use the tracks of any horse railway.

**Where route coincides with another route.**

§ 131. Whenever the route or routes determined upon by the commissioners coincide with the route or routes covered by the

charter of an existing corporation, formed for the purpose of constructing and operating such a railway, and it has not forfeited its charter or failed to comply with the provisions thereof, requiring the construction of a road or roads within the time therein prescribed, such corporation shall have the like power to construct and operate such railway upon the fulfillment of the like requirements and conditions imposed by the commissioners as a corporation specially formed under this article, and the commissioners may fix and determine the route or routes by which any elevated steam railway now in actual operation may connect with other steam railways or the depots thereof, or with steam ferries, upon making compensation therefor, and in case such corporations can not agree with the owners of such steam railways, depots or ferries upon the amount of such compensation, and such owners may be entitled to compensation therefor, the amount of such compensation shall be ascertained and paid in the manner prescribed in the condemnation law, and upon fulfillment by such elevated railway corporation, so far as it relates to such connection, of the requirements and conditions imposed by this article, it shall possess all the powers conferred by section 129 of this article, and when any connecting route or routes shall be so designated, such elevated railway corporation may construct such connection with all the rights and with like effect as though the same had been part of the original route of such railway.

Thus amended by chap. 676, Laws of 1892.

#### Commissioners to transfer plans, etc.

§ 132. Within one month after such corporation shall have been formed and organized in the manner hereinbefore provided, the commissioners shall transfer and deliver to the corporation all plans, specifications, drawings, maps, books and papers in their possession, and they shall, within the like period of one month after the organization of such corporation, cause to be paid to the treasurer thereof all money collected under the provisions of this article, after deducting therefrom the necessary

expenses incurred by the commissioners and the amounts due to them for their salaries.

**Commissioners to file report; confirmation thereof.**

§ 133. The commissioners shall within one hundred and forty days after their appointment, make a report to a special term of the supreme court of the department in which such railway may be located, of the amount of the pecuniary damage arising from the diminution of value of each parcel of property bounded on that portion of the street or streets, highway or highways, upon which it is proposed to construct such railway or railways, which will be caused by the construction, maintenance and operation thereof. The name and place of residence of the owner or owners of each parcel shall be stated if the same are known, or can be ascertained, and if not known the name of the person or persons appearing by the certificate of the clerk or register of the county, to have the title thereto from the records in his office, and a specific description of each parcel of property with reasonable certainty. The testimony, if any, taken by the commissioners as to the amount of such damage, shall accompany their report. Within thirty days after filing and recording its certificate of incorporation, the corporation authorized to construct and operate such railway or railways shall move to confirm such report by giving notice of such motion to the property owners in the manner in which notice of the time and place of hearing before the commissioners is required by section 125 to be given, and if the corporation fails to so move, any property owner may make the motion; and thereafter the proceedings shall be conducted in the manner prescribed in the condemnation law. Before constructing and operating its railway in front of any real property bounded upon any street, avenue or public place wherein the corporation is authorized by the certificate and report of the commissioners to construct and operate its road, such corporation shall pay to the owner of the real property the damages sustained or which will be sustained by him in consequence thereof, as finally fixed and ascertained, and the costs

allowed him, if any, and the court may direct that such damages be paid out of the moneys deposited pursuant to the provisions of section 125, or in case negotiable securities shall have been deposited in lieu of money, that so much of such securities shall be sold as may be necessary to raise the amount required to be paid to such owner for damages and costs if any. If a bond shall have been executed in lieu of such deposit, the court may order the sureties in such bond to pay the damages so fixed and ascertained, and in default thereof may cause them to be proceeded against and punished as for a contempt of court.

Thus amended by chap. 676, Laws of 1892.

#### Pay of commissioners.

§ 134. Each of the commissioners shall be paid for his services at the rate of ten dollars per day for each day of actual service as such commissioner, and all expenses necessarily incurred by him in the discharge of his duties, to be paid by such corporation, but if a sufficient amount of capital stock shall not be subscribed within one year after the appointment of such commissioners to authorize the formation of such corporation, the commissioners shall receive no salary, and shall cause to be returned to the subscribers for such stock the amounts paid in by them, after deducting therefrom the necessary expenses incurred by the commissioners, but the time, if any, unavoidably consumed by the pendency of legal proceedings shall not be deemed a part of any period of time limited by this article.

#### Quorum; term of office; removal; vacancies in board of commissioners.

§ 135. A majority of the members of any board of commissioners appointed under this article shall be a quorum for the transaction of any business or the performance of any duty or function, or the exercise of any power, conferred or enjoined upon them. Any commissioner may be removed for cause at any time by the power appointing him, but no commissioner shall



be removed without due notice and an opportunity to be heard in defense; and no commissioner thus removed is, or shall be eligible to be again appointed to the office of commissioner. In case of the death, resignation or removal from office of any commissioner the vacancy shall be filled by the power appointing him, within thirty days after such removal, or within thirty days after notice in writing to such appointing power given by some member of the board, or by the corporation hereinafter mentioned, of such death or resignation, and a certificate of every such appointment shall be filed as hereinbefore required. Except as otherwise provided by law, the terms of office of the commissioners shall determine and expire with the performance of their functions as hereinabove prescribed.

**Abandonment or change of route; new commissioners; their powers and proceedings.**

§ 136. Any corporation heretofore organized or hereafter to be organized under this article, its successor or assigns, which shall have constructed or put in operation a railway upon a part and not upon the whole of the route fixed, determined and located for such railway by a board of commissioners, may at any time apply for authority to abandon any portion of the route upon which the railway shall not have been theretofore constructed or shall not then be in operation, with or without a change and relocation of such portion, and with or without extension of the portion not abandoned, or of any part thereof. Such application shall be made by petition in writing, addressed by such corporation to the board of supervisors of the county in which such portion of the route so desired to be changed or abandoned shall be situated, which is not within the limits of any city, or if such route, or any part thereof, shall be within the limits of a city, to the mayor of the city, for the route or portion thereof within such city. Five commissioners may be appointed pursuant to such an application as hereinafter provided, who shall be residents of the county or city and who shall have full power as herein provided. When such application is

made by a corporation heretofore organized such commissioners may be appointed within thirty days after presentation of the same by such board of supervisors, or, as the case may be, by such mayor. When such application is made by a corporation hereafter to be organized under this article, such board of supervisors, or, as the case may be, such mayor, may within thirty days after presentation of such application, indorse thereon their or his approval and direction that it may be presented to the supreme court in the manner provided in section 120 of this article, and such court may thereupon appoint such commissioners. Within ten days after his appointment each commissioner so appointed shall take, subscribe and file the oath and give and file the bond prescribed by section 121 of this article; and if any one so appointed shall not comply with this requirement, he shall be deemed to have declined to accept such appointment, and to have made a vacancy which the appointing power shall fill by another appointment as herein\* provided. Within fifteen days after such appointments shall have been so made, the commissioners shall meet at some convenient place in such county and complete their organization as a board with appropriate officers. Such board shall have all the authority conferred by law upon commissioners appointed, or authorized to be appointed under this article. Before proceeding to hear the application of the corporation, the board shall give such public notice as it may deem most proper and effective of the time and place of the hearing. Within thirty days after completing their organization such board shall hear the application of the corporation, and all parties who may be interested therein, and within sixty days after their organization they shall determine whether any part of such route should be authorized to be abandoned, or should be changed and relocated with or without extension or extensions. If the board shall determine that no abandonment of any part of the route should be allowed, and that no change and relocation of any part thereof should be effected, and that no extension should be made, the board shall dismiss the appli-

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\*So in the original.

cation. If the board shall determine that an abandonment of any portion of the route should be allowed, or that any change in or extension thereof should be made, the board shall proceed to authorize and require the same upon such conditions as to the board shall seem proper, and with or without extension of the remainder of the route or of any part thereof, by fixing, determining and locating the route or routes of the extension or extensions, if any, and by directing the abandonment of the part of the route theretofore located, but by the board allowed to be abandoned, if any, and by fixing, determining and relocating the part of the route theretofore located, but by the board changed, if any; and the board shall cause to be made in duplicate a survey and map of the route as so changed and fixed, determined and located. Neither such corporation nor any assign or successor thereof shall thereafter have any authority, by reason of anything done under this article to operate or construct any railway upon any portion of the route by the board so required to be abandoned. The board shall also fix and determine the time within which the railway by it authorized and required upon any portion of the route so changed, shall be reconstructed and ready for operation. If the railway on any portion of the route not by the board changed or allowed to be abandoned, shall not have been theretofore constructed and made ready for operation, the board may extend, and fix and determine anew the time within which such railway shall be completed, but such extension of time shall not be for a longer period than that originally allowed by law for the completion thereof. If the board shall have determined that any portion of the route theretofore located should be allowed to be abandoned, with or without a change or relocation thereof or any part thereof, and with or without extension, or if the board shall have extended the time within which such railway shall be completed, the board shall make a report in writing in accordance with the determination so made, describing the portion of the route, if any there be, as so fixed, determined and located anew, and the part, if any there be, of the route allowed to be abandoned, and stating

the period of time, if any, by the board fixed and determined within which such corporation shall construct and complete the railway theretofore authorized or by it authorized to be constructed, and prescribing that a failure by the corporation, its successors or assigns, to complete it within the time, if any so limited, shall work a forfeiture to the supervisors of the county if no part of the road is within a city, or in any city, to such city, of the rights and franchises of such corporation with respect to that portion of the route so fixed, determined and located anew, and with respect to the then authorized extension or extensions, if any there be of said route, upon which a railway shall not be constructed within the time so limited; but the time, if any, unavoidably consumed by the pendency of legal proceedings, shall not be deemed a part of any period of time limited in this article, and any recital of any forfeiture of any of the rights or franchises prescribed by any commissioners heretofore appointed, to be to the mayor, aldermen and commonalty of the city of New York, shall be as effectual for any and all purposes as if such forfeiture had been in terms recited to be to the board of supervisors of the county of New York. Such report shall be signed in duplicate by at least a majority of the then members of the board, and there shall be thereto annexed the survey and map as hereinabove directed, showing the line and location of each and all the routes, with or without the extension or extensions, as fixed, determined and located, and showing also the parts or part, if any there shall be, of the route or routes as theretofore fixed, determined and located, but by the board allowed to be abandoned. Within ten days after so signing such report the board shall cause the same to be filed in the office of the secretary of state, and the duplicate thereof in the office of the clerk of the county wherein such railway shall be located; and thereupon the corporation making such application, its successors or assigns, is and shall be authorized to construct, maintain and operate a steam railway for the transportation of passengers, mail and freight, upon the route or routes so fixed, determined and located, and in said report described, but the construction

or operation of a railway upon any new location or selection of route is not and shall not be thus authorized except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railway be first obtained, or in case the consent of such property owners can not be obtained, that the determination of three commissioners, to be upon application appointed by the general term of the supreme court, in the district in which such railroad is proposed to be constructed, be given after a hearing of all parties interested that such railway ought to be constructed or operated, which determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Such corporation is and the successors and assigns thereof shall be authorized to maintain and operate all the railroads and the appurtenances thereof by it or them theretofore constructed upon any portion of a route or routes which shall have been located by commissioners under this article, and to complete within the time in and by such report so extended, fixed and determined anew, and thereafter to maintain and operate, the railway and the appurtenances, upon so much of the route or routes theretofore fixed, determined and located as shall not have been so authorized and required to be abandoned, and with the same rights and effect, in all respects, as if such extended period of time had been originally fixed and determined, and in the original certificate of incorporation of such corporation recited, for completing such railway and putting it in operation. The other terms and conditions in and by such certificate mentioned and prescribed, except as the same are hereinbefore modified or may be modified by the board as hereinabove authorized, shall apply to the railway herein authorized to be constructed and operated upon the route or routes as so changed, fixed, determined and located, with the same force and effect as if such route or routes, as finally so changed and located, had been in and by such articles or certificates themselves prescribed. If a new location or exten-

sion of routes shall be fixed and determined by commissioners who shall have been appointed by the court pursuant to this section, they shall also ascertain and determine the aggregate pecuniary damages arising from the diminution of value of the property bounded on that portion of the street or highway upon the line of such new location or extension and of each parcel of real property so bounded, and their proceedings thereupon shall be conducted in the same manner and upon the like notice as the proceedings for that purpose before the commissioners specified in section 125 and shall make to the supreme court the report required by section 133, and thereupon the same proceedings shall be had as are provided for in such last named section. Each commissioner shall be paid for his services at the rate of ten dollars per day for each day of actual services as such commissioner, and all reasonable expenses incurred by him in or about any of the matters referred to such board, to be paid by the corporation making the application so heard and determined. No corporation shall be authorized under this section to extend, abandon or change the location of its route, or any part thereof, where the greater portion of the route or routes is or shall be in that portion of the city of New York south or west of Harlem river, or of any route or part thereof in the city of Brooklyn or county of Kings, or to construct, extend, abandon or change the location of any railway or route for a railway over, under, through or across any street, avenues, place or lands south of One Hundred and Twenty-eighth street or west of Third avenue in that portion of the city of New York south or west of Harlem river, or where a railway might not by law be constructed, or was not by law authorized to be by a board of commissioners located on the 5th day of June, 1888.

Thus amended by chap. 676, Laws of 1892.

#### **Increased deposit, when and how required.**

§ 137. In case any of the securities deposited in lieu of money as provided in section one hundred and twenty-five, shall in the opinion of the county treasurer or trust company with whom they may be deposited, fall below their actual value at the time

of deposit, the county treasurer or trust company shall call upon such railway corporation to substitute therefor other securities equivalent at their par or market value to the amount in lieu of which the securities for which they are to be substituted were deposited, and in case such other securities shall not be furnished, the county treasurer or trust company shall call upon such corporation to furnish as a substitute, and it shall so furnish an amount of money equal to the amount in lieu of which the securities first above referred to were deposited.

**Trains to come to full stop, etc.**

§ 138. All trains upon elevated railroads shall come to a full stop before any passenger shall be permitted to leave such train; and no train on such railroad shall be permitted to start until every passenger desiring to depart therefrom shall have left the train, provided such passenger has manifested his or her intention to so depart by moving toward or upon the platform of any car; nor until every passenger upon the platform or station at which such train has stopped, and desiring to board or enter such cars, shall have actually boarded or entered the same, but no person shall be permitted to enter or board any train after due notice from an authorized employee of such corporation that such train is full and that no more passengers can be then received.

**Gates or vestibule doors.**

§ 139. Every car used for passengers upon elevated railroads shall have gates at the outer edge of its platforms so constructed that they shall, when opened, be caught and held open by such catch or spring as will prevent their swinging and obstructing passengers in their egress from or ingress to such cars, or vestibule doors so constructed as to slide into the body of the car; and every such gate or door shall be kept closed while the car is in motion; and when the car has stopped and a gate or door has been opened, the car shall not start until such gate or door is again firmly closed.

Thus amended by chap. 273, Laws of 1903.

**Penalty for violation of this article.**

§ 140. Any elevated railroad corporation that shall fail or neglect to comply with or enforce the provisions of this article, shall upon the petition of any citizen to any court of record, and upon due notice to such corporation, and proof of such failure or neglect, pay to the clerk of the court wherein such petition was made, a sum not less than two hundred and fifty nor more than one thousand dollars, as such court may direct by its order. The sum so ordered to be paid shall be paid by such clerk of the court to the county treasurer, and shall be distributed by such treasurer equally among the public hospitals of the county in which the proceeding is had, at such time, as the board of supervisors or board of aldermen in any such county shall direct. Nothing in this section shall relieve elevated railroad corporations from any liability under which they may now be held by existing laws for damages to persons or property.

Thus amended by chap. 676, Laws of 1892.

**Sections to be printed and posted.**

§ 141. The officers and board of directors of such railroad corporations shall cause copies of sections one hundred and thirty-eight, one hundred and thirty-nine and one hundred and forty to be printed conspicuously and posted in the\* depots or stations and in each car belonging to them.

**Extension of time.**

§ 142. The time within which any act is required to be done under this article may be extended by the supreme court for good cause shown, for one year, and but one extension will be granted. Any company that has heretofore constructed or is now operating an elevated railroad shall be deemed to have been duly incorporated notwithstanding any failure on the part of commissioners to insert in its articles of association provisions complying with statutory requirements relative to such articles.

Added by chap. 676, Laws of 1892.

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\*So in the original.



## ARTICLE VI.

## THE BOARD OF RAILROAD COMMISSIONERS.

## SECTION 150.

151. Suspension from office.
152. Secretary and marshal of board.
153. Additional officers; their duties.
154. Oath of office; eligibility of officers of board.
155. Principal office and meetings of board.
- 156.
157. General powers and duties of board.
- 158.
159. Investigation of accidents.
160. Recommendations of board where law has been violated.
161. Recommendations of board when repairs or other changes are necessary.
162. Legal effect of recommendation and action of the board.
163. Corporation must furnish necessary information.
164. Attendance of witnesses and their fees.
165. Fees to be charged and collected by the board.
166. Annual report of board.
167. Certified copies of papers filed to be evidence.
168. Acts prohibited.
- 169.
- 170.
171. Application of this article.
172. Railroad commissioners may award prizes for improvements.

§ 150. There shall continue to be a board of railroad commissioners, consisting of five competent persons, one of whom shall be experienced in railroad business, appointed by the governor, by and with the advice and consent of the senate, each of whom shall hold office for the term of five years, and until his successor shall have been appointed and shall have qualified. A commissioner shall in like manner be appointed upon the expiration of the term of any commissioner; and when any vacancy shall occur in the office of any commissioner, a commissioner shall in like manner be appointed for the residue of the term. If the senate shall not be in session when the vacancy occurs, the governor shall appoint a commissioner to fill the vacancy, subject to the approval of the senate when convened.

Thus amended by chap. 728, Laws of 1905.

**Suspension from office.**

§ 151. Any commissioner may be suspended from office by the governor upon written charges preferred. The governor shall report such suspension and the reasons therefor to the senate at the beginning of the next ensuing session, and if a majority of the senate shall approve the action of the governor, such commissioner shall be removed from office and his office become vacant.

**Secretary and marshal of board.**

§ 152. The board shall have a secretary and a marshal who shall be appointed by it and serve during its pleasure. The secretary shall keep a full and faithful record of the proceedings of the board, and be the custodian of its records, and file and preserve at its general office all books, maps, documents and papers intrusted to his care, and be responsible to the board for the same. Under the direction of the board he shall be its chief executive officer, shall have general charge of its office, superintend its clerical business, conduct its correspondence, be the medium of its decisions, recommendations, orders and bequests\*, prepare for service such papers and notices as may be required of him by the commissioners, and perform such other duties as the board may prescribe, and he shall have power to administer oaths in all cases pertaining to the duties of his office. He shall have the power to designate from time to time one of the clerks appointed by the board to act as assistant secretary during his absence from the county of Albany, and the clerk so designated for the time designated shall within the county of Albany only, possess the powers conferred by this section upon the secretary of the board.

Thus amended by chap. 534, Laws of 1892.

**Additional officers; their duties.**

§ 153. The board may also appoint, to serve during its pleasure, the following officers or any of them: An accountant, who shall be thoroughly skilled in railroad accounting, and who shall,

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\*So in the original.

under the direction of the board, make examinations of the books and accounts of railroad and other corporations, and supervise the quarterly and annual reports made by the railroad corporations to the board, and collect and compile railroad statistics, and perform such other duties as the board may prescribe. An inspector, who shall be a civil engineer, skilled in railroad affairs; also, an inspector, who shall be an expert in electrical railroad affairs, each of whom shall make such inspections of railroads and other matters relating thereto, as directed by the board, and report to it. Such additional clerical force as may be necessary for the transaction of its business. The board may also employ engineers, accountants and other experts whose services they may deem to be of temporary importance in conducting any investigation authorized by law.

Thus amended by chap. 456, Laws of 1896.

#### **Oath of office; eligibility of officers of board.**

§ 154. Each commissioner, and every person appointed to office by the board, shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. No person shall be appointed to or hold the office of commissioner or be appointed by the board to, or hold any office, place or position under it who holds any official relation to any railroad corporation, or owns stock or bonds therein, or who is in any manner pecuniarily interested in any firm or corporation having business relations with any such corporation.

#### **Principal office and meetings of board.**

§ 155. The principal office of the board shall be at the city of Albany, in rooms designated by the capitol commissioners, and it may have a branch office at the city of New York, and one at the city of Buffalo; and the board, or a quorum thereof, shall meet at least once a month during the year at the office in Albany. The board shall have an official seal, to be prepared by the secretary of state in accordance with law, and its offices shall be supplied with necessary postage, stationery, office furniture and appliances, to be paid for as other expenses authorized by this

article, and it shall have prepared for it by the state the necessary books, maps and statistics, incidentally necessary for the discharge of its duties.

§ 156. Three of the commissioners shall constitute a quorum for the transaction of any business, or the performance of any duty of the board and may hold meetings thereof at any time or place within the state. All examinations or investigations made by the board may be held and taken by and before any one of the commissioners or the secretary of the board, by the order of the board, and the proceedings and decisions of such single commissioner or secretary, shall be deemed to be the proceedings and decisions of the board, when approved and confirmed by it.

Thus amended by chap. 728, Laws of 1905.

#### **General powers and duties of board.**

§ 157. The board shall have power to administer oaths in all matters relating to its duties, so far as necessary to enable it to discharge such duties, shall have general supervision of all railroads and shall examine the same and keep informed as to their condition, and the manner in which they are operated for the security and accommodation of the public and their compliance with the provisions of their charters and of law. The commissioners or either of them in the performance of their official duties may enter and remain during business hours in the cars, offices and depots, and upon the railroads of any railroad corporation within the state, or doing business therein; and may examine the books and affairs of any such corporation and compel the production of books and papers or copies thereof, and the board may cause to be subpoenaed witnesses, and if a person duly subpoenaed fails to obey such subpoena without reasonable cause, or shall without such cause refuse to be examined, or to answer a legal or pertinent question, or to produce a book or paper which he is directed by subpoena to bring, or to subscribe his deposition after it has been correctly reduced to writing, the board may take such proceedings as are authorized

by the Code of Civil Procedure upon the like failure or refusal of a witness subpoenaed to attend the trial of a civil action before a court of record or a referee appointed by such court. The board shall also take testimony upon, and have a hearing for and against any proposed change of the law relating to any railroad, or of the general railroad law, if requested to do so by the legislature, or by the committee on railroads of the senate or the assembly, or by the governor, and may take such testimony and have such a hearing when requested to do so by any railroad corporation, or incorporated organization representing agricultural or commercial interests in the state, and shall report their conclusions in writing to the legislature, committee, governor, corporation or organization making such request; and shall recommend and draft such bills as will in its judgment protect the people's interest in and upon the railroads of this state.

§ 158. The board shall prescribe the form of the report required by the railroad law to be made by railroad corporations, and may from time to time make such changes and additions in such form, giving to the corporation six months' notice before the expiration of any fiscal year, of any changes or additions which would require any alteration in the method or form of keeping their accounts, and on or before June thirtieth in each year, shall furnish a blank form for such report. When the report of any corporation is defective, or believed to be erroneous, the board shall notify the corporation to amend the same within thirty days. The originals of the reports, subscribed and sworn to as prescribed by law, shall be preserved in the office of the board.

Thus amended by chap. 158, Laws of 1904.

See section 57, Railroad Law, *ante*; also sections 416, 602 and 611, Penal Code, *post*.

### Investigation of accidents.

§ 159. The board shall investigate the cause of any accident on any railroad resulting in loss of life or injury to persons, which in their judgment shall require investigation, and include

the result thereof in their annual report to the legislature. Before making any such examination or investigation, or any investigation or examination under this article, reasonable notice shall be given to the corporation, person or persons conducting and managing such railroad of the time and place of commencing the same. The general superintendent or manager of every railroad shall inform the board of any such accident immediately after its occurrence. If the examination of the books and affairs of the corporation, or of witnesses in its employ, shall be necessary in the course of any examination or investigation into its affairs, the board, or a commissioner thereof, shall sit for such purpose in the city or town of this state where the principal business office of the corporation is situated if requested so to do by the corporation; but the board may require copies of books and papers, or abstracts thereof, to be sent to them to any part of this state.

**Recommendations of board, where law has been violated.**

§ 160. If, in the judgment of the board, it shall appear that any railroad corporation has violated any constitutional provision or law, or neglects in any respect to comply with the terms of the law by which it was created, or unjustly discriminates in its charges for services, or usurps any authority not granted by law, or refuses to comply with the provisions of any law, or with any recommendation of the board, it shall give notice thereof in writing to the corporation, and if the violation, neglect or refusal is continued after such notice, the board may forthwith present the matter to the attorney-general, who shall take such proceedings thereon as may be necessary for the protection of the public interests.

See decisions of courts as to powers of the board.

**Recommendations of board, when repairs or other changes are necessary.**

§ 161. If in the judgment of the board, after a careful personal examination of the same, it shall appear that repairs are

necessary upon any railroad in the state, or that any addition to the rolling stock, or any addition to or change of a station or station houses, or that additional terminal facilities shall be afforded, or that any change of the rates of fare for transporting freight or passengers or in the mode of operating the road or conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, the board shall give notice and information in writing to the corporation of the improvements and changes which they deem to be proper, and shall give such corporation an opportunity for a full hearing thereof, and if the corporation refuses or neglects to make such repairs, improvements and changes, within a reasonable time after such information and hearing, and fails to satisfy the board that no action is required to be taken by it, the board shall fix the time within which the same shall be made, which time it may extend. It shall be the duty of the corporation, person or persons owning or operating the railroad to comply with such decisions and recommendations of the board as are just and reasonable. If it fails to do so the board shall present the facts in the case to the attorney-general for his consideration and action, and shall also report them in its annual or in a special report to the legislature. Elevated railroad corporations are included in the application of this section.

Thus amended by chap. 373, Laws of 1902.

See decisions of courts as to powers of the board.

#### **Legal effect of recommendations and action of the board.**

§ 162. No examination, request or advice of the board, nor any investigation or report made by it, shall have the effect to impair in any manner or degree the legal rights, duties or obligations of any railroad corporation, or its legal liabilities for the consequence of its acts, or of the neglect or mismanagement of any of its agents or employees. The supreme court at special term shall have power in its discretion in all cases of decisions and recommendations by the board which are just and reasonable to compel compliance therewith by mandamus, subject to

appeal to the general term and the court of appeals, and upon such appeal, the general term and the court of appeals may review and reverse upon the facts as well as the law.

Thus amended by chap. 676, Laws of 1892.

See 89 App. Div., 325.

#### **Corporations must furnish necessary information.**

§ 163. Every railroad corporation shall, on request, furnish the board any necessary information required by them concerning the rates of fare for transporting freight and passengers upon its road and other roads with which its business is connected, and the condition, management and operation of its road, and shall, on request, furnish to the board copies of all contracts and agreements, leases or other engagements entered into by it with any person or corporation. The commissioners shall not give publicity to such information, contracts, agreements, leases or other engagements, if, in their judgment, the public interests do not require it, or the welfare and prosperity of railroad corporations of the state might be thereby injuriously affected.

See section 416, Penal Code, *post*.

#### **Attendance of witnesses and their fees.**

§ 164. All subpoenas shall be issued by the president of the board, or by any two members thereof, and may be served by any person of full age authorized by the board to serve the same. The fees of witnesses before the board shall be two dollars for each day's attendance, and five cents for every mile of travel by the nearest generally traveled route in going to and returning from the place where the attendance of the witness is required, and the fees shall be audited and paid by the comptroller on the certificate of the secretary of the commission.

#### **Fees to be charged and collected by the board.**

§ 165. The board shall charge and collect the following fees: For copies of papers and records not required to be certified, or otherwise authenticated by the board, ten cents for each folio of one hundred words; for certified copies of official documents filed in its office, fifteen cents for each folio, and one dollar for



every certificate under seal affixed thereto; for each certified copy of the quarterly report made by a railroad corporation to the board, fifty cents; for each certified copy of the annual report of the board, one dollar and fifty cents; for certified copies of evidence and proceedings before the board, fifteen cents for each folio. No fees shall be charged or collected for copies of papers, records or official documents, furnished to public officers for use in their official capacity, or for the annual reports of the board in the ordinary course of distribution. All fees charged and collected by the board belong to the people of the state, and shall be paid quarterly, accompanied with a detailed statement thereof into the treasury of the state to the credit of the general fund.

#### Annual report of board.

§ 166. The board shall make an annual report on or before the second Monday in January in each year, which shall contain:

1. A record of their meetings and an abstract of their proceedings during the preceding year.

2. The result of any examination or investigation conducted by them.

3. Such statements, facts and explanations as will disclose the actual workings of the system of railroad transportation in its bearing upon the business and prosperity of the state, and such suggestions as to the general railroad policy of the state, of the amendment of its laws, or the condition, affairs or conduct of any railroad corporation, as may seem to them appropriate.

4. Drafts of all bills submitted by them to the legislature and the reasons therefor.

5. Such tables and abstracts of all the reports of all the railroad corporations as they may deem expedient.

6. A statement in detail of the traveling expenses and disbursements of the commissioners, their clerks, marshal and experts.

Five hundred copies of the report with the reports of the railroad corporations of the state, in addition to the regular number prescribed by law, shall be printed as a public document of the

state, bound in cloth for the use of the commissioners, and to be distributed by them in their discretion to railroad corporations and other persons interested therein.

Certified copies of papers filed to be evidence.

§ 167. Copies of all official documents filed or deposited according to law in the office of the board, certified by a member of the board or the secretary thereof to be true copies of the originals under the official seal of the board, shall be evidence in like manner as the originals.

Acts prohibited.

§ 168. No railroad commissioner shall, directly or indirectly, solicit or request from, or recommend to any railroad corporation, or any officer, attorney or agent thereof, the appointment of any person to any place or position nor shall any railroad corporation, its attorney or agent, offer any place, appointment or position or other consideration to such commissioners, or either of them, nor to any clerk or employe of the commissioners or of the board; neither shall the commissioners or either of them, nor their secretary, clerks, agents, employes or experts, accept, receive or request any pass from any railroad in this state, for themselves or for any other person, or any present, gift or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, of any such place or position, pass, presents, gifts or other gratuity shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, employe or employes, expert or experts, requesting or accepting the same.

See section 417, Penal Code, *post*; also section 416, Penal Code, *post*.

§ 169. The annual salary of each commissioner shall be eight thousand dollars; of the secretary six thousand dollars; of the marshal fifteen hundred dollars, of the accountant and of the inspector such sum as the board may fix, not exceeding three thousand dollars each; of the clerical force such sums respectively as the board may fix. In the discharge of their official

duties, the commissioners, their officers, clerks and all experts and agents whose services are deemed temporarily of importance, shall be transported over the railroads in this state free of charge upon passes signed by the secretary of state and the commissioners shall have reimbursed to them the necessary traveling expenses and disbursements of themselves, their officers, clerks and experts, not exceeding in the aggregate nine hundred dollars per month. All salaries and disbursements shall be audited and allowed by the comptroller and paid monthly by the state treasurer upon the order of the comptroller out of the funds provided therefor.

Thus amended by chap. 728, Laws of 1905.  
See 11 Misc. 103.

§ 170. The total annual expense of the board authorized by law, excepting only rent of offices and the cost of printing and binding the annual reports of the board as provided by law, shall not exceed one hundred thousand dollars; and shall be borne by the several corporations owning or operating railroads according to their means, to be apportioned by the comptroller, who, on or before July first, in each year, shall assess upon each of such corporations its proportion of such expenses, one-half in proportion to its net income for the fiscal year next preceding that in which the assessment is made, and one-half in proportion to the length of its main road and branches, except that each corporation whose line of road lies partly within and partly without the state, shall in respect of its net income be assessed on a part bearing the same proportion to its whole net income that the line of its road within the state bears to the whole length of road, and in respect of its main road and branches shall be assessed only on that part which lies within the state. Such assessment shall be collected in the manner provided by law for the collection of taxes upon corporations.

Thus amended by chap. 728, Laws of 1905.

#### Application of this article.

§ 171. The provisions of this article shall apply to all railroads within the state, and the corporations, receivers, trustees, directors or others, owning or operating the same or any of

them, and to all sleeping and drawing-room car corporations, and to all other associations, partnerships or corporations engaged in transporting passengers or freight upon any such railroad as lessee or otherwise.

§ 172. The railroad commissioners may in their discretion act as judges to award prizes which may be offered by any responsible person for improvements in machinery or appliances for operating railroads.

This section added by chap. 452, Laws of 1894.

Sections 180 to 183, both inclusive, were repealed by chap. 676, Laws of 1892.

# Sections of the Constitution of the State of New York Relating to Railroads.

(See town bonding acts, *post.*)

ARTICLE I.—SECTION 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

ARTICLE III.—SECTION 18. The legislature shall not pass a private or local bill in any of the following cases:

\* \* \* \* \*

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

\* \* \* \* \*

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

ARTICLE VII.—SECTION 7. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any cor-

poration, public or private, nor shall the timber thereon be sold, removed or destroyed.

ARTICLE VIII.—SECTION 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

§ 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

ARTICLE XIII.—SECTION 5. No public officer, or person elected or appointed to a public office, under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney-General. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation, giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

## Other General Acts Relating to Railroads.

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### CHAP. 133, LAWS OF 1847.

AN ACT authorizing the incorporation of rural cemetery associations.

§ 10. The cemetery lands and property of any association formed pursuant to this act, and any property held in trust by it for any of the purposes mentioned in section nine of this act, shall be exempt from all public taxes, rates and assessments, and shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietor. But the proprietors of lots or plots in such cemeteries, their heirs or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purposes of a cemetery, and during that time no street, road, avenue or public thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association, and of two-thirds of the lot owners thereof and then only by special permission of the legislature of the state.

Thus amended by chap. 237, Laws of 1904.

All the rest of the act was repealed by the Membership Corporation Law. See section 91, Highway Law, *post*.

### CHAP. 62, LAWS OF 1853.

AN ACT to regulate the construction of roads and streets across railroad tracks.

Laying out streets or highways across railroad tracks.

SECTION 1. It shall be lawful for the authorities of any city, village or town in this state, who are by law empowered to lay out streets and highways, to lay out any street or highway across the track of any railroad now laid or which may hereafter be laid, without compensation to the corporation owning such railroad; but no such street or highway shall be actually opened for

use until thirty days after notice of such laying out has been served personally upon the president, vice-president, treasurer or a director of such corporation.

**Railroad corporations to cause street laid out across their track to be taken across at most convenient place for public travel.**

§ 2. It shall be the duty of any railroad corporation, across whose track a street or highway shall be laid out as aforesaid, immediately after the service of said notice, to cause the said street or highway to be taken across their track, as shall be most convenient and useful for public travel, and to cause all necessary embankments, excavation and other work to be done on their road for that purpose; and all the provisions of the act, passed April second, eighteen hundred and fifty, in relation to crossing streets and highways, already laid out, by railroads, and in relation to cattle, guards and other securities and facilities for crossing such roads, shall apply to streets and highways hereafter laid out.

**Penalty for neglect or refusal.**

§ 3. If any railroad corporation shall neglect or refuse, for thirty days after the service of the notice aforesaid, to cause the necessary work to be done and completed, and improvements made on such streets or highways across their road, they shall forfeit and pay the sum of twenty dollars for every subsequent day's neglect or refusal, to be recovered by the officers laying out such street or highway, to be expended on the same; but the time for doing said work may be extended, not to exceed thirty days, by the county judge of the county in which such street or high way, or any part thereof, may be situated, if, in his opinion the said work cannot be performed within the time limited by this act.

This act has been repealed by the provisions of the grade crossing law, sections 60-69 of the Railroad Law. (158 N. Y., 410.)



## CHAP. 474, LAWS OF 1855.

AN ACT for the protection of immigrants, second class, steerage and deck passengers.

SECTION 1. It shall be the duty of all companies, associations, and persons, hereafter undertaking to transport or convey, or engaged in transporting or conveying, by railroad, steamboat, canal-boat or propeller, any immigrant, second class, steerage, or deck passenger, from the city, bay, or harbor of New-York, to any point or place, distant more than ten miles therefrom, or from the cities of Albany, Troy and Buffalo, the town or harbor of Dunkirk, or the Suspension Bridge, to any other place or places, to deliver to the mayors of the city of New-York, Albany, Troy, and Buffalo, on or before the first day of April in each and every year, a written or printed statement of the price, or rates of fare, to be charged by such company, association or person, for the conveyance of such immigrant, second class, steerage and deck passengers respectively, and the price per hundred pounds for the carriage of the luggage, and the weight of luggage to be carried free of such passengers from and to each and every place, from and to which any such company, association, or person, shall undertake to transport and convey such passengers; and such prices or rates shall not exceed the prices and rates charged by the company, association or person, after the time of delivering such statement to the said mayors; and such statement shall also contain a particular description of the mode and route by which such passengers are to be transported and conveyed, specifying whether it is to be by railroad, steamboat, canal-boat or propeller, and what part of the route is by each, and also the class of passage, whether by immigrant trains, second class, steerage or deck passage. In case such companies, association, or person, shall desire thereafter to make any change or alteration in the rates or prices of such transportation and conveyance, they shall deliver to the said mayors respectively a similar statement of the prices and rates as altered and changed by them; but the rates and prices so changed and altered, shall

not be charged or received until five days after the delivery of the statement thereof to the said mayors respectively.

§ 2. Every ticket, receipt or certificate which shall be made or issued by any company, association or person, for the conveyance of any immigrant, second class, steerage or deck passengers, or as evidence of their having paid for a passage, or being entitled to be conveyed from either or any of the points or places in the first section of this act mentioned to any other place or places, shall contain or have endorsed thereon a printed statement of the names of the particular railroad or railroads, and of the line or lines of steamboats, canal boats and propellers, or of the particular boats or propellers, as the case may be, which are to be used in the transportation and conveyance of such passengers, and also the price or rate of fare charged or received for the transportation and conveyance of any such passenger or passengers with his or their luggage.

§ 3. It shall not be lawful for any person or persons to demand or receive, or bargain for the receipt of any greater or higher price or rate of fare for the transportation and conveyance of any such immigrant, second class, steerage or deck passengers with their luggage, or either, from either or any of the points or places in the first section of this act mentioned, to any other point or place, than the prices or rates contained in the statements which shall be delivered to the mayors of the cities of New-York, Albany, Troy and Buffalo, and said commissioners, respectively, as in the said first section provided for, or the price or rates which shall be established and fixed for the transportation and conveyance of such passengers and their luggage, or either, by the proprietors or agents of the line or lines, or means of conveyance, by which such passenger or passengers and their luggage are to be transported or conveyed. In all cases each immigrant over four years of age conveyed by railroad shall be furnished with a seat with permanent back to the same, and when conveyed by steamboat, propeller or canal boat, shall be allowed at least two and one half feet square in the clear on deck. Such deck shall be covered and made water tight over-

head, and shall be properly protected at the outsides, either by curtains or partitions, and shall be properly ventilated.

§ 4. Any company, association, person or persons, violating or neglecting to comply with any of the provisions of the first or second sections of this act, shall be liable to a penalty of two hundred and fifty dollars for each and every offense, to be sued for and recovered in the name of the people of this state;

\* \* \* \* \*

See section 626, Penal Code, *post*.

#### CHAP. 228, LAWS OF 1857.

AN ACT in relation to the payment of fare upon the New-York Central railroad.

SECTION 1. The New-York Central railroad company, at every station on its road, where a ticket office is now or may hereafter be established, shall keep the same open for the sale of tickets at least one hour prior to the departure of each passenger train from such station; but nothing herein contained shall require said company to keep such office open between nine o'clock P. M. and five o'clock A. M., except at Albany, Schenectady, Utica, Syracuse, Rochester, Buffalo, and Suspension Bridge, which shall be kept open as hereinbefore required between five o'clock A. M. and eleven o'clock P. M.

§ 2. If any person shall, at any station, where a ticket office is established and open, enter the cars of said company, as a passenger thereon, without having first purchased a ticket for that purpose, it shall be lawful for the said company to demand and receive from such person a sum not exceeding five cents, in addition to the usual rate of fare for the distance such person may desire to be transported.

See section 37 Railroad Law, *ante*; chap. 38, Laws of 1889, *post*.

#### CHAP. 10, LAWS OF 1860.

\*AN ACT relative to railroads in the city of New York.

SECTION 1. It shall not be lawful hereafter to lay, construct or operate any railroad in, upon or along any or either of the

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\*While this is not a general act, it is deemed of sufficient importance to be printed here.

streets or avenues of the city of New York, wherever such railroad may commence or end, except under the authority and subject to the regulations and restrictions which the legislature may hereafter grant and provide. This section shall not be deemed to affect the operation, as far as laid, of any railroad now constructed and duly authorized. Nor shall it be held to impair, in any manner, any valid grant for or relating to any railroad, in said city, existing on the first day of January, eighteen hundred and sixty.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect immediately.

#### CHAP. 590, LAWS OF 1872.

AN ACT to regulate processions and parades in the cities of the state of New York.

No procession or parade to interfere with free passage of cars upon railways.

SECTION 1. No procession or parade shall use any street upon the surface of which is a railway track or tracks by marching upon the said track or tracks, and a free passage of cars upon railway tracks shall not be interfered with by the formation, halt or march of any such procession or parade, or of the persons composing it. Whenever any procession shall find it necessary to march across a railway track, the portion of said procession which in so marching is likely\* to stop the passage of any car or cars upon said track shall come to a halt in order to permit said car to proceed.

\* \* \* \* \*

#### Penalty.

§ 4. Every person willfully violating any provision of this act shall be guilty of a misdemeanor, punishable with a fine not exceeding twenty dollars, or imprisonment not exceeding ten days, or both at the discretion of the court.

See section 426, Penal Code, *post*.

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\*So in the original.

## CHAP. 392, LAWS OF 1875.

AN ACT for the better security of railroad employees for labor performed.

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Personal liability of stockholders; notice; time for commencing action.

§ 8. Each and all the stockholders of such corporation shall be jointly and severally liable for the debts due or owing to any of its laborers or servants, other than contractors for personal service for ninety days' service, or less than ninety days' service, performed for such corporation, but shall not be liable to an action therefor, before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution shall be the amount recoverable with costs against such stockholders, before such laborer or servant shall charge such stockholders for such ninety days' service or less than ninety days' service, he shall give notice in writing, within twenty days after the performance of such service, that he intends to so hold him liable, and shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant, shall have been had, shall have a right to recover the same of the other stockholders in such corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.

See sections 48, 54 and 55, Stock Corporation Law, and section 30, Railroad Law, *ante*; and section 8, Labor Law, and chaps. 418 and 419, Laws of 1897, *post*.

## CHAP. 317, LAWS OF 1881.

AN ACT to authorize a change, in certain cases, of the time for holding elections in railroad companies.

Companies may change time for holding elections.

SECTION 1. Any railroad company, the time for the annual election of directors in which is now fixed for any day in the month of June, may by a vote of a majority of the stock, either

in person or by proxy, thereof to that effect, and filing in the office of the secretary of state a copy of such proceedings, certified by the secretary of the company under its corporate seal, change the time for holding such annual election to any day in the month of April; provided, however, that the first election held under such resolution shall be held in the month of April which shall precede the time at which such election would otherwise have been held.

See section 20, Stock Corporation Law, *ante*.

#### CHAP. 452, LAWS OF 1881.

**AN ACT to authorize corporations owning canals to construct and operate railroads alongside of or in lieu thereof.**

**Corporation owning canal may construct railroad.**

SECTION 1. It shall be lawful for any corporation of this state owning and operating a canal to construct and operate along or in lieu of such canal a railroad and the exercise of the authority hereby conferred shall not be deemed to forfeit or impair its corporate rights under its charter or act of incorporation.

**Corporate powers.**

§ 2. Such company in the construction and maintenance of any such railroad under the authority of this act shall have, possess and enjoy all the powers and privileges contained in an act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and the several acts amending the same, and be subject to all the duties, liabilities and provisions so far as relates to any powers or privileges by this act upon said company conferred and hereafter exercised.

**Not authorized to construct railroad in any other locality.**

§ 3. Nothing in this act contained shall authorize the construction of any railroad except upon or along such canal owned and operated by any such company, and not in any other locality.

See chap. 469, Laws of 1899.

## CHAP. 378, LAWS OF 1883.

## AN ACT in relation to receivers of corporations.

## Application for appointment of receiver, where made.

SECTION 1. Every application hereafter made for the appointment of a receiver of a corporation, other than applications made by the attorney-general on behalf of the people of the state, shall be made at a special term of the supreme court, held in and for the judicial district in which the principal business office of the corporation is located; and all such applications made by the attorney-general shall be made in the judicial district in which the action in which the appointment is sought is triable; and any action or proceeding hereafter brought by the attorney-general on behalf of the people of the state against any corporation for the purpose of procuring its dissolution, the appointment of a receiver, or the sequestration of its property, may be brought in any county of the state, to be designated by the attorney-general.

Thus amended by chap. 282, Laws of 1896.

## Compensation.

§ 2. Every receiver shall be allowed to receive as compensation for his services as such receiver, five per centum for the first one hundred thousand dollars received and paid out, and two and one-half per centum on all sums received and paid out in excess of the said one hundred thousand dollars, but no receiver shall be allowed or shall receive on such percentages or otherwise, for his said services, for any one year a greater sum as compensation than twelve thousand dollars nor for any period less than one year more than at the rate of twelve thousand dollars, unless the court upon proper notice shown to said receivers makes an extra allowance not to exceed two and one-half per centum upon the sum received and paid out, provided that where more than one receiver shall be appointed, the compensation herein provided shall be divided between said receivers.

Thus amended by chap. 506, Laws of 1901.

**Order appointing receiver to designate place of deposit.**

§ 3. All orders appointing receivers of corporations shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited, and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.

**Duties of receiver.**

§ 4. It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the bank superintendent; if a receiver of an insurance company, with the superintendent of insurance; and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months; and it shall be unlawful for any receiver of the character specified in this section to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof shall have been stated to the special term in this manner, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the appellate division and the court of appeals on an appeal taken therefrom by any party aggrieved thereby. Of the intention to present such account, as aforesaid, the attorney-general, and also the surety or sureties on the official bond of such receiver, shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months.

Thus amended by chap. 139, Laws of 1896.



Intervenor to pay his own legal expenses; no allowance to be made for costs to attorneys.

§ 5. In case of the intervention of any policy-holder or depositor, by permission of the court, such policy-holder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policy-holder or depositor.

Receiver to close up affairs within one year.

§ 6. The affairs of every insolvent corporation now in the hands of any receiver shall be fully closed up by the receiver thereof within one year from the passage of this act, unless the court, upon application by said receiver and upon due notice to the attorney-general, shall give additional time for that purpose.

Attorney-general may apply to have receiver removed; appeal.

§ 7. The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district, for an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or to compel him to account, or for such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the general term of said court of the department in which such motion is made.

Copies of all papers to be served on attorney-general.

§ 8. A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding now pending for the dissolution of

a corporation or a distribution of its assets, or which shall hereafter be commenced for such purpose, shall, in all cases, be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this law would be ex parte or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy or order, unless the attorney-general shall appear on the return day and have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

**Applications under this act; where to be made; venue changed.**

§ 9. All applications to the court, contemplated by this act, shall be made in the judicial district where the principal office of the corporation against which proceedings are taken is located, excepting such applications as are made in actions brought by the attorney-general on behalf of the people of the state, and all such applications shall be made in the judicial district in which the action is triable.

Thus amended by chap. 282, Laws of 1896.

**Preference on calendar.**

§ 10. All actions or other legal proceedings and appeals therefrom or therein brought by or against a receiver of any of the insolvent corporations referred to in this act, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the state of New York.

**Repeal.**

§ 11. All acts or parts of acts inconsistent herewith are hereby repealed.

See chap. 285, Laws of 1884; chap. 310, Laws of 1886; section 8, Labor Law; chaps. 522 and 534, Laws of 1898, and chap. 404, Laws of 1902, *post*.  
See section 5, Stock Corporation Law; section 76, Railroad Law, *ante*.

**CHAP. 285, LAWS OF 1884.**

AN ACT to provide for the transfer of securities and property by bankrupt corporations to the receivers of such corporations and for the transfer by the superintendent of the insurance department to receivers of insolvent life insurance and annuity companies of funds and securities deposited with such superintendent by such companies for the security of policy-holders.

Where receivers have or shall be appointed for any corporation other than an insurance company on application by attorney-general, property to vest in receiver; proviso.

SECTION 1. In all cases where receivers have been or shall be appointed for any corporation of this state other than an insurance company on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; provided, however, that such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made on the attorney-general and the custodian of the funds, securities or property.

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See chap. 310, Laws of 1886; chaps. 522 and 534, Laws of 1898, and chap. 404, Laws of 1902, *post*.

**CHAP. 490, LAWS OF 1885.**

AN ACT concerning tramps.

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**Penalty for entering building without consent.**

§ 4. Any tramp who shall enter any building against the will of the owner or occupant thereof, under such circumstances as shall not amount to burglary, or willfully or maliciously injure the person or property of another, which injury under existing law does not amount to a felony, or shall be found carrying any firearms or other dangerous weapon, or burglar's tools, or shall threaten to do any injury to any person or to the real or personal property of another, when such offense is not now punishable by imprisonment in the state prison, shall be deemed guilty of felony, and on conviction, shall be punished by imprisonment in the state prison at hard labor for not more than three years.

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See sections 887a and 889, Code of Criminal Procedure, *post*.

**CHAP. 310, LAWS OF 1886.**

AN ACT to provide for the winding up of corporations which have been annulled and dissolved by legislative enactment.

**Duty of attorney-general.**

SECTION 1. Whenever any corporation organized under the laws of this State shall be annulled and dissolved by an act of the Legislature, it shall be the duty of the Attorney-General immediately thereafter to bring a suit to wind up and finally settle and adjust the affairs of such annulled and dissolved corporation.

**Suit, where to be brought.**

§ 2. Such suit shall be brought in the supreme court in the name of the people of the State, in any county which the attorney-general may select. The president, or vice-president, or secretary, or treasurer of such dissolved corporation, who may have been in office at the time of the dissolution thereof, shall be named, as such officer, as defendant in such suit, and the summons and complaint therein shall be served upon him. If, at the time of such annulment and dissolution, there shall not be

one of the above designated officers of such corporation, then such suit shall be brought against and the summons and complaint therein served upon any one of the persons who were last acting as directors of such corporation.

**Court to appoint receiver.**

§ 3. It shall be the duty of the special term of the supreme court in the county designated in such summons and complaint, or of any judge of said court who resides in the judicial department in which such county is situated, upon the presentation of a certified copy of the act of the Legislature annulling and dissolving a corporation, and of the summons and complaint founded thereon, immediately to appoint a receiver of the assets and property of such dissolved corporation; and the person so appointed shall be both the temporary and permanent receiver thereof, and shall give a bond with sureties to be approved by said court or such judge thereof, to the people of the State in the penalty of not less than ten thousand dollars, conditioned for the faithful discharge of his duties as such receiver, and for his due accounting for, and paying over all moneys and property which may come to his hands as such receiver. No one of the officers, directors or stockholders of such corporation shall be appointed such receiver thereof.

**Receiver to make inventory.**

§ 4. Such receiver shall, immediately after his appointment and the approval of his bond, cause an inventory of all the property of such dissolved corporation to be taken and filed in the office of the clerk of the county in which such action is pending, and for the purpose of ascertaining the nature, extent and location of such property, the said receiver shall have power to compel the attendance of witnesses, as hereinafter provided, and all evidence taken by or before said receiver in relation to such property shall be filed by him in the office of such county clerk.

**Notice to creditors; powers and duties of receivers; creditors to present claims.**

§ 5. The said receiver shall, immediately after his appointment, publish in two newspapers to be designated by said court, or such judge thereof, daily for one week, and for such longer time, not exceeding one month, as the said court or such judge thereof may by order designate, a notice to all creditors of such dissolved corporation to present their claims and demands against, and all evidences of indebtedness of, such dissolved corporation, to such receiver at a time and place to be designated in such notice. Such receiver is hereby authorized to examine on oath any of such creditors, or claimants, or other witnesses, as to any and all matters pertaining to any claim or demand or evidence of indebtedness so presented. At the expiration of ten days from the date specified in such notice, or within such further time as may be allowed by said court or such judge thereof, the said receiver shall make a list of all the claims presented to or proved before him, in which list he shall specify the amount, origin and true consideration of each claim so presented to or proved before him, and the name of the person in whose behalf the same is presented or proved, and the date when such claimant became the true owner thereof. Such list when so completed shall be verified by such receiver, and shall thereupon be filed, together with such evidence as may have been taken by him, in the office of the said county clerk. The said receiver shall, immediately after such filing, publish a notice daily for fourteen days in two newspapers to be designated by said court, or such judge thereof, stating that such list will be presented to such court, or to a judge thereof, residing in such county, on a day and at a place to be designated in such notice, and the said court or such judge thereof will then and there be asked for an order directing the sale at public auction of all the property specified in such inventory. Any creditor or stockholder may appear and be heard at such time and place. It shall be the duty of said court, or of such judge thereof, to whom such

list shall be presented, to examine the same together with such evidence as the receiver shall have taken, and to reject all claims, demands and evidences of indebtedness which were not legally incurred or created by said corporation, or which were in excess of its powers, or which are for any reason shown to be illegal; and no claim or demands shall be allowed for any greater amount than the money value of the consideration therefor, unless the said court or judge shall find and decide from the evidence taken by and before the receiver, that the person professing to own such claim does in truth own the same by reason of having taken a negotiable instrument or paper before the act dissolving and annulling the corporation alleged to be bound by such instrument or paper, and also before such instrument or paper was by its terms due, and that the same was taken for value paid and parted with in good faith before said act of dissolution and without knowledge or notice of any defect, want or deficiency of previous consideration, or other equity, offset, or defense originally attaching to such instrument or paper, or to the claim or demand upon which the same are founded. Such examination and rejection shall be made by such court or such judge thereof, and not by any referee.

When claim of creditor is debarred; right of creditor to appeal; sale of property; allowance to receiver; distribution of assets.

§ 6. All creditors whose claims shall not have been presented as above provided shall be debarred from participating in the avails of the sale of the property described in said inventory. Any creditor whose claim may have been rejected, and who shall have appealed, may apply to said court or such judge thereof for an order that a pro rata amount of the avails of such sale which would have appertained to the claim of such creditor, had not the same been rejected, may be retained in court to abide the result of his appeal, and said court, or such judge thereof, shall have discretion to grant the same. Any claimant feeling aggrieved by such rejection may appeal therefrom to the general term and to the Court of Appeals, in the manner now provided

by law for such appeals from orders in civil actions, but neither of such appeals shall stay the proceedings of such receiver, or court, or judge thereof, or a sale of such property as herein provided for. The amount of all claims and demands so rejected by said court or such judge shall be deducted from the total amount of claims and demands so filed by the said receiver, and an entry of such rejection shall be made upon said list by said court or such judge, and thereupon the said court or such judge shall by order, reciting the proceedings direct the immediate sale by said receiver, at public auction, at a time and place and in the manner, and after such notice as may be provided in said order, of all the property in said inventory specified, to such person, firm or corporation as shall bid the highest sum or amount therefor. The receiver shall report to said court or such judge thereof, the name of the highest bidder, the amount bid, and thereupon said court or such judge thereof shall by order forthwith direct the said receiver by proper written instrument to convey and transfer all of the property described in said inventory, and offered for sale at said auction, to said highest bidder, who on receiving the same shall pay to the receiver the sum bid. The said court or such judge thereof, shall allow to the receiver two per cent upon the whole amount received by him from the sale of the property described in said inventory for his compensation as such receiver, and also his disbursements, including witness' fees, and the service of subpoenas, and to the Attorney-General, and to such other counsel as the receiver may find it necessary to employ, a reasonable counsel fee. The residue of the amount in the hands of the receiver shall be by him distributed among the owners of the claims in said list, which have been allowed subject to the deductions above provided for in case of an appeal, pro rata, or in full if such residue shall be sufficient therefor, and the receipts of such owners therefor shall be taken upon such list of claims. The balance of such residue, if any shall be distributed among the lawful stockholders of such corporation in proportion to their interest therein.



**Proceedings not to be stayed.**

§ 7. No issue raised by answer, or demurrer, or otherwise to the complaint hereinbefore provided for shall stay the proceedings of the receiver, or court or a judge thereof.

**Discharge of receiver.**

§ 8. The said receiver after such payment may apply to said court, or a judge thereof, for his final discharge, and if it shall appear that the said receiver has in all things fulfilled his duty in the premises, the said court or judge shall grant such final discharge, and said receiver, until so discharged, may as such receiver sue for and collect all debts due, and demands owing to such corporation.

**Subpoenas, by whom issued; receiver may administer oaths; false swearing, perjury.**

§ 9. It shall be the duty of the clerk of the county in which such suit is brought, to issue, upon the request of the receiver, subpoenas to compel the attendance of witnesses to enable him to ascertain the nature, extent and location of the property of said corporation, and to give evidence concerning any claim which may be presented by any creditor against the estate of such corporation, which subpoenas shall be served in like manner as in civil actions, and the fees of the witness shall be the same as are now established by law in such actions. The receiver shall have full power and authority to administer oaths to all such witnesses and to any creditor of such dissolved corporation, and to examine them concerning the property of such dissolved corporation, and as to the claims presented against it. Disobedience to such subpoenas shall be a contempt of court, and shall be punished in like manner as other contempts of court are now punishable. Willful false swearing by any witness or creditor in any such examination shall be deemed perjury, and shall be punishable as such in like manner as if committed by a witness on a trial of a civil action.

Leave to sue receiver, how and where obtainable.

§ 10. All applications for leave to sue such receiver and all applications for injunctions to restrain his proceedings shall be made only to the supreme court in the county in which such action was brought, and shall not be made to any other court, or to the supreme court in any other county, and shall not be granted except upon eight days' notice to the Attorney-General of the time and place of making such application. In any action hereafter brought or now pending by the Attorney-General, to close up, determine or settle the affairs of any corporation dissolved by legislative enactment, the judgment or determination of the supreme court at general term may be reviewed upon appeal to the Court of Appeals, as now provided by law, whether the judgment rendered in the case be interlocutory or final.

Thus amended by chap. 601, Laws of 1887.

Repeal, etc.

§ 11. This act shall take effect immediately, and all acts and parts of acts inconsistent therewith are hereby repealed.

See section 5, Stock Corporation Law; section 76, Railroad Law; chap. 378, Laws of 1883; chap. 285, Laws of 1884, *ante*; chaps. 522 and 534, Laws of 1898, chap. 404, Laws of 1902, and section 31, Rapid Transit Act, *post*.

## CHAP. 38, LAWS OF 1889.

AN ACT to regulate the payment of fares upon railroads.

Extra fare may be exacted when no ticket is purchased; rebate ticket to be issued therefor.

SECTION 1. It shall be lawful for any company owning or operating a steam railroad in this State, to demand and collect an excess charge of ten cents over the regular or established rate of fare, from any passenger who pays fare in the car in which he or she may have taken passage, except where such passage is wholly within the limits of any incorporated city in this State, provided, however, that it shall be the duty of such company to give to any passenger paying such excess, a receipt or other evidence of such payment, and which shall legibly state that it entitles the holder thereof to have such excess charge refunded.

upon the delivery of the same at any ticket office of said company, upon the line of their railroad, and said company shall refund the same upon demand; and provided further that this act shall not apply to any passenger taking passage from a station or stopping place when tickets cannot be purchased during half an hour previous to the schedule time for the departure of said train, on which such passenger takes passage.

See section 37 Railroad Law, *ante*; chap. 228, Laws of 1857, *ante*.

### CHAP. 555, LAWS OF 1890.

AN ACT to provide for the improvement and maintenance of the public roads in certain counties as county roads.

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Construction of horse, electric or other railways.

§ 7. No horse railway or electric or other railway shall be laid, constructed or operated on said county roads, unless, in addition to the requirements of existing laws, the same shall be authorized by a two-third vote of the board of supervisors and unless the same shall be constructed with a flat or grooved rail, and in case of horse railways, paved between the tracks in the manner prescribed by the board of supervisors in the resolution authorizing the same and the same constantly maintained in good order and condition by said railroad company, and the railroad or corporation constructing the same shall agree thereto, and it shall be the duty of the said board of supervisors to require from said railroad or corporation, or other person, a bond with sufficient sureties as a guarantee, and conditioned for the performance of their agreement, and the board of supervisors may, from time to time, require such bond to be renewed in case the sureties, or any of them, in its judgment, shall become insufficient.

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See special acts as to railroads on certain of these highways.

## CHAP. 566, LAWS OF 1890.

AN ACT in relation to transportation corporations, excepting  
railroads, constituting chapter forty of the general laws.

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## Existing routes and extensions.

§ 23. Any corporation incorporated under any law of this state heretofore enacted which owns and operates a lawfully established stage route which has been continuously operated by such company or its predecessors in title to such route for five years last past in any city of the first-class, is hereby authorized and empowered to extend its existing routes at any time or times and to operate the same as extended with stages and omnibuses propelled by electricity or any other motive power, in and upon any streets and highways of such city, without further or other authority, proceeding, or consent required under any act, general, public, private or local; provided, however, that such extensions shall not become valid until they shall have been first approved by the state board of railroad commissioners, who, on giving their approval, shall make a certificate of such extension or extensions of route as approved, which certificate shall be filed in the office of the secretary of state, and in the office of the clerk of the county in which such extension is located. Such company, on filing in said offices an acceptance of the extensions specified in such certificate and on operating such extensions, shall have the right to charge a fare not exceeding ten cents per passenger for a continuous ride over the whole or any part of the routes owned or operated by it, and shall pay a license fee to the city in which it operates equal to the charge now in force for licensing similar stages and omnibuses, and shall also pay to the comptroller or other chief fiscal officer of said city five per centum per annum of its gross receipts from the operation of said routes.

Added by chap. 657, Laws of 1900.

See provisions of Greater New York Charter, *post*.

See section 163, Highway Law, chap. 538, Laws of 1904; section 666, Penal Code, *post*.

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**Crossings.**

§ 33. Whenever any tramway, constructed by any such corporation, shall cross a railroad, highway, turnpike, plank-road or canal, such tramway shall be so constructed as not to interfere with the free use of such railroad, highway, turnpike, plank-road or canal for the purposes for which they were intended.

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**Railroad, turnpike, plank-road and highway crossings.**

§ 43. Whenever any line of pipe of any such corporation shall necessarily cross any railroad, highway, turnpike or plank-road, such line of pipe shall be made to cross under such railroad, highway, turnpike or plank-road and with the least injury thereto practicable, and unless the right to cross the same shall be acquired by agreement, compensation shall be ascertained and made to the owners thereof, or to the public in case of highways, in the manner prescribed in the condemnation law, but no exclusive title or use shall be so acquired as against any rail-road, turnpike or plank-road corporation, nor as against the rights of the people of this state in any public highway, but the rights acquired shall be a common use of the lands in such manner as to be of the least practical injury to such railroad, turnpike or plank-road, consistent with the use thereof by such pipe-line corporation, nor shall any such corporation take or use any lands, fixtures or erections of any railroad corporation, or have the right to acquire by condemnation the title or use, or right to run along or upon the lands of any such corporation, except for the purpose of directly crossing the same when necessary.

**CHAP. 568, LAWS OF 1890.**

AN ACT in relation to highways, constituting chapter nineteen of the general laws.

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**General powers of commissioner.**

SECTION 4. The commissioners of highways in the several towns, shall have the care and superintendence of the highways

and bridges therein, except as otherwise specially provided in relation to incorporated villages, cities and other localities; and they shall

1. Cause such highways and bridges to be kept in repair, and give the necessary directions therefor, and shall inspect the highways and bridges in each highway district between the first and fifteenth day of September in each year, or at such other time as the board of supervisors by resolution may prescribe. If it appears to him upon such inspection that the labor assessed in any highway district has not been entirely performed therein, he shall transmit a statement to the supervisor of his town containing the number of days' labor which in his opinion have not been performed in such district, and a list of all persons and corporations owning property therein, and the number of days of labor still to be performed by such persons and corporations. A notice of the transmission of such statement and of the day and place where the persons assessed for highway labor in such district may be heard before such supervisor, shall be posted in at least three conspicuous places in the road district affected by such statement. On the day and at the place specified in such notice, the supervisor shall hear all persons interested in the performance of labor on the highways in such district. After such hearing, the supervisor shall correct such list in accordance with the testimony and facts as they appear to him and shall make a return thereof to the board of supervisors in the same manner as unpaid taxes and unperformed labor are returned by the town board to the board of supervisors. The board of supervisors at its annual meeting in each year, shall cause the amount of the arrearages for highway labor contained in such lists, estimating each day's labor at one dollar and fifty cents a day, to be collected from the property of the person or corporation specified in such list, in the same manner as arrearages for unperformed labor.

Subdivision 1, thus amended by chap. 75, Laws of 1902.

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4. Assign to each of the highway districts such of the inhabitants and corporations liable to work on highways, or who are assessed for highway taxes thereon, as they shall think proper, having regard to proximity of residence as much as may be.

Subdivision 4, thus amended by chap. 611, Laws of 1904.

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Subdivision 8. Have power to enter upon the lands of any person adjoining any of the rivers, streams or creeks of the state, drive spiles, throw up embankments and perform such other labor as may be necessary upon the banks of such rivers, streams or creeks for the purpose of keeping them or any of them within their proper channels and preventing their encroachment upon any of the highways of the state; to enter upon any lands adjoining any highway and which lands during the spring freshets or any time of high water are subject to overflow from such rivers, streams or creeks, and to remove or change the position of any fence or other obstruction which prevents the free flow of water under or through any highway, bridge or culvert whenever the same may be necessary for the protection of any highway; to protect such highways and the property of the town from damages by reason of such rivers, streams or creeks washing away their embankments, or changing the location of the channels; to enter upon any lands adjacent to any of the highways of the town and with the approval of the town board to remove any fence or other obstruction which causes snow to drift in and upon said highway, and erect snow fences or other devices upon such lands to prevent the drifting of snow in or upon any such highway; and to agree with the owner of any such lands upon the amount of damages, if any, sustained by him in consequence of such entry upon his lands and the performance of the work herein authorized, and the amount of the damages so agreed upon shall be a town charge, and shall be audited and paid in the same manner as other town charges. If the commissioners are unable to agree with such owner upon the amount of damages thus sustained, the amount thereof shall be ascertained and deter-

mined and paid in the same manner as damages for the laying out and opening of highways are required by law to be ascertained, determined and paid, where the commissioners and land owner are unable to agree upon the amount thereof.

Subdivision 8, thus amended by chap. 478, Laws of 1904.

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#### General duties of overseers.

§ 20. Each overseer of highways in every town, shall

1. Repair and keep in order the highways within his district.
2. Warn all persons and corporations assessed to work on the highways in his district, to come and work thereon.

3. Cause the noxious weeds within the bounds of the highway within his district, to be cut down or destroyed twice in each year, once before the first day of July, and again before the first day of September; and the requisite labor therefor shall be considered highway work.

4. Collect all fines and commutation money, and execute all lawful orders of the commissioners.

5. Cause all loose stone lying in the beaten track of every highway within his district, to be removed once in every month, from the first day of April until the first day of December, in each year. Stones so removed shall not be thrown into the gutter, nor into the grass adjoining such highway, but they shall be conveyed to some place, from which they shall not work back or be brought back into the track by the use of road machines or other implements used in repairing such highways. Any person who shall violate the provisions hereof or who shall deposit or throw loose stones in the gutter or grass adjoining a highway or shall deposit or throw upon a highway ashes, papers, stones, sticks, or other rubbish, to the detriment or injury of the public use of, or travel upon such highway, shall be liable to a penalty of ten dollars, to be sued for and recovered by the commissioner or commissioners of highways, or in case of his or their refusal or neglect to act, by any taxpayer of the town in the name of the town in which the offence shall be committed, and when recov-



ered, one-half of the amount shall be applied by them in improving the highways and bridges in such town. The other half shall be paid to the person upon whose written information the action was brought. Any commissioner of highways who shall neglect to prosecute for or join in an action with the other commissioners of highways to recover such penalty, knowing the same to have been incurred, or within twenty days after a sworn statement has been laid before them showing that a party is liable to such penalty, shall be guilty of a misdemeanor.

Subdivision 5, thus amended by chap. 166, Laws of 1902.

6. Cause the monuments erected or to be erected, as the boundaries of highways, to be kept up and renewed, so that the extent of such highway boundaries may be publicly known.

#### **Opening obstructed highways.**

§ 21. Whenever the labor in any district has been worked out, commuted for, or returned to the supervisor in a town under the labor system of taxation for working its highways, or in those towns that have adopted the money system of taxation for working the highways, and the town has not been divided into highway districts, the moneys voted at the town meeting for the removal of obstructions caused by snow and the prevention of such obstructions has been expended and the highways are obstructed by snow, and notice has been given to the overseer or highway commissioner in writing, by any two or more inhabitants of the town, liable to the payment of highway tax, requesting the removal of such obstruction, the overseer of highways in such district or the highway commissioner of the town shall immediately call upon all persons, corporations and occupants of lands owned by non-residents liable to highway tax therein or in the locality where such obstruction exists, to assist in removing such obstruction and such labor so called for by the overseer or highway commissioner, shall be assessed upon those liable to perform the same or in the locality where such obstruction exists, in proportion to their original assessments. Whenever in a town that has adopted the money system of taxation for working the

highways, and has been divided into highway districts, the moneys, if any, voted at the town meeting for the removal of obstructions caused by snow and the prevention of such obstructions has been expended, or in which no money was voted at the town meeting for such purpose, and the highways in any district are obstructed by snow, the overseer of highways of such district shall immediately call upon the persons and corporations in such district assessed for highway labor in pursuance of subdivision six of section thirty-three of this chapter to assist in removing such obstruction, and shall credit such persons or corporations with the days' labor so performed. Should any persons, corporations or occupants of lands owned by non-residents so called out neglect or refuse to appear at the place designated by the overseer or the commissioner of highways, or to commute at a dollar a day within twenty-four hours after due notice, the overseer or commissioner of highways shall cause the obstruction to be immediately removed and on or before September first of each year, or at such other time as the board of supervisors may by resolution prescribe, make out a list of all persons, corporations or occupants of lands owned by non-residents who shall fail to work out such labor or commute therefor, with the number of days not worked or commuted for by each, charging for each day in such list at the rate of one dollar and fifty cents per day, verified to the effect that such persons, corporations or occupants of lands owned by non-residents have been notified to appear and perform such labor or commute therefor, and that the same has not been performed or commuted; said list shall be certified by the commissioner of highways of such town to the town board and by said town board to the board of supervisors, and the amount of such arrearages shall be levied by such board of supervisors against and collected from the real or personal estate of such persons and corporations and from the real estate owned by non-residents specified in such list in the manner now provided by law for the return, assessment and collection of arrearages for unperformed highway labor. Each overseer of highways and highway commissioner neglecting to perform such duty shall be liable

to a penalty of five dollars per day, for every day he neglects, without good and sufficient reasons, to have such highway opened after receiving such written notice, and for each day after September first or the day so fixed, he neglects to make out, verify and deliver such list, the penalty to be collected in justices'\* court, by the supervisor in the name of the town, and paid over to the highway fund of the town. No persons or corporations shall be allowed any sum for highway labor performed in removing obstructions caused by snow unless authorized or directed by the overseer or commissioner of highways to perform such labor. No moneys collected or received under section fifty-three shall be appropriated for removing obstructions caused by snow or preventing such obstructions.

Thus amended by chap. 672, Laws of 1905.

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§ 33. Subdivision 6. In a town which has adopted the money system of taxation for working its highways, and which has been divided into highway districts, and in which the money, if any, voted at the town meeting is deemed by the commissioner of highways insufficient for the removal of obstructions caused by snow and the prevention of such obstructions, or in which no money is voted at the town meeting for such purpose, the commissioner of highways shall annually on or before November fifteenth make an estimate of the probable number of days' labor needed during the following year for the removal of obstructions caused by snow in the highways and for the prevention of such obstructions, and shall assess such days' labor as provided by this subdivision. Every person liable to assessment under subdivision two of this section shall be assessed one day. The balance of such estimated number of days shall, in the same manner as is provided by subdivision three of this section for the assessment of highway labor in towns under the labor system, be assessed upon the estates, real and personal, of persons liable to assessment under such subdivision. Copies of the lists of persons and corporations assessed shall be prepared by the com-

\*So in the original.

missioner and delivered to the several overseers in the town in the manner provided by section thirty-four of this chapter.

Subdivision 6 added by chap. 672, Laws of 1905.

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### Commutations.

§ 62. Every person and corporation shall work the whole number of days for which he or it shall have been assessed, except such days as shall be commuted for, at the rate of one dollar per day and such commutation money shall be paid to the overseers of highways of the district in which the labor shall be assessed, within at least twenty-four hours before the time, when the person or corporation is required to appear and work on the highways; but any corporation must pay its commutation money on or before the first day of June in each year to the commissioner or commissioners of highways of the town in which the labor shall be assessed, and such commutation money shall be expended by the commissioner or commissioners of highways upon the roads and bridges of the town as may be directed by the town board except that in the counties of Albany, Dutchess, Fulton, Hamilton, Greene, Herkimer, Lewis, Montgomery, Putnam, Richmond, Rockland, Schoharie, Suffolk, Tompkins, Ulster, Westchester and Yates, the commissioner or commissioners shall pay the same to the overseers of the districts, respectively, in which the labor commuted for was assessed.

Thus amended by chap. 495, Laws of 1904.

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### Penalties for neglect to work or commute.

§ 65. Every person or corporation assessed highway labor, who shall not commute, and who shall not appear and work when duly notified, shall be liable to a penalty of one dollar and fifty cents for every day he shall so fail to appear and work; and for wholly omitting to comply with any requisition to furnish a team, cart, wagon, implements and man, he shall be liable to a penalty of five dollars for each day's omission, and for omitting to furnish either a cart, wagon, plow, team or man to manage the team,

he shall be liable to a penalty of one dollar and fifty cents for each day's omission; and if any person shall after appearing, remain idle, or not work faithfully, or hinder others from working, he shall be liable to a penalty at the rate of one dollar and fifty cents a day, for each hour. In those towns in which the money system of taxation has been adopted, any person who is taxed a poll tax for highway purposes as provided in section fifty-three of this chapter, and who does not pay such tax in the manner and at the time, prescribed by law, shall be liable to a penalty of five dollars. The penalties herein imposed, may be recovered by action by the overseer of highways as such, or by the highway commissioner in those towns having no such overseers, and, when collected, shall be expended and disposed of by the overseer or commissioner in the same manner as commutation moneys. The penalties, when recovered, shall be applied in satisfaction of the labor assessed, for omission to perform which, the penalties were respectively imposed. The overseer of highways may excuse any omission to perform labor when required, if a satisfactory reason shall be given therefor; but the acceptance of any such excuse shall not exempt the person excused from commuting for, or working the whole number of days for which he shall have been assessed during the year.

Thus amended by chap. 242, Laws of 1902.

#### **Assessment for unperformed labor.**

§ 66. Every overseer of highways shall on or before September first of each year, or at such other time as the board of supervisors may by resolution prescribe, make out and deliver to the commissioner of highways of his town, a list of all persons and corporations who have not worked out, or commuted for their highway assessment, with the number of days not worked or commuted for by each, charging for each day in such a list, at the rate of one dollar and fifty cents per day; and also a list of all the lands of nonresidents and persons unknown, which were assessed on his warrant by the commissioners of highways, or added by him, on which the labor assessed has not been per-

formed or commuted for, and the number of days' labor unpaid by each, charging for the same at the rate of one dollar and fifty cents per day, which list shall be accompanied by the affidavit of the overseer, that he has given the notice required, to appear and work, and that the labor specified in the list returned has not been performed or commuted, and it shall be the duty of the commissioner of highways to collect and present such lists to the town board of his town at the meeting held on the Thursday next preceding the annual meeting of the board of supervisors. The town board shall certify the amount of unpaid taxes so returned to them by the commissioner of highways to the board of supervisors.

Thus amended by chap. 75, Laws of 1902.

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#### Noxious weeds in highway.

§ 70. Every person or corporation, owning or occupying, under a lease for one or more years, any lands, abutting upon any highway, shall cause all noxious weeds, briars and brush growing upon such lands within the bounds of the highway, to be cut or destroyed between the fifteenth day of June and the first day of July, and between the fifteenth day of August and the first day of September, in each and every year; but boards of supervisors may fix a different period or periods, for such cutting or destruction in their respective counties. No person shall place or cause to be placed, any noxious weeds, or the seeds of such weeds, within the bounds of any public highway. Any willful violation of this section, shall subject the person or corporation so offending to a penalty of ten dollars for each offense.

Thus amended by chap. 681, Laws of 1899.

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#### Laying out highways through burying-grounds.

§ 91. No private road or highway shall be laid out or constructed upon or through any burying-ground, unless the remains therein contained are first carefully removed, and properly reinterred in some other burying-ground, at the expense of the persons

desiring such road or highway, and pursuant to an order of the county court of the county in which the same is situated, obtained upon notice to such persons as the court may direct.

See chap. 133, *Laws of 1847, ante*.

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### Highways abandoned.

§ 99. Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been travelled or used as a highway for six years, shall cease to be a highway, and every public right of way that shall not have been used for said period shall be deemed abandoned as a right of way. The commissioners of highways shall file, and cause to be recorded in the town clerk's office of the town, written description, signed by them, of each highway and public right of way so abandoned, and the same shall thereupon be discontinued.

Thus amended by chap. 622, *Laws of 1899*.

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### Entitled to free use of highways.

§ 163. The commissioners, trustees, or other authorities having charge or control of any highway, public street, park, parkway, driveway or place, shall have no power or authority to pass, enforce or maintain any ordinance, rule or regulation, by which any person using a bicycle or tricycle shall be excluded or prohibited from the free use of any highway, public street, avenue, roadway, driveway, park, parkway or place, at any time when the same is open to the free use of persons having and using other pleasure carriages, except upon such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages. But nothing herein shall prevent the passage,

enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parks, parkways and places, or the regulation of the speed of carriages, vehicles, or engines, in public parks and upon parkways and driveways in the city of New York, under the exclusive jurisdiction and control of the department of parks of said city nor prevent any such commissioners, trustees, or other authorities in any other city from regulating the speed of any vehicles herein described in such manner as to limit and determine the proper rate of speed with which such vehicles may be propelled, nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances nor to prohibit the use of any vehicle upon that part of the highway, street, park, or parkway, commonly known as the footpath or sidewalk.

Thus amended by chap. 540, Laws of 1904. See section 23, Transportation Corporation Law, *ante*; Greater New York Charter; chap. 538, Laws of 1904; section 666, Penal Code, *post*.

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#### When schedules to be posted.

§ 174. Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats used on such ferry, a schedule plainly printed in the English language, of the rates of ferriage charged thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall be guilty of a misdemeanor.

Thus amended by chap. 313, Laws of 1900.

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## CHAP. 267, LAWS OF 1891.

AN ACT to authorize change of gauge on railroads and to provide for an increase of floating and bonded indebtedness.

SECTION 1. Any railroad company incorporated under chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and acts amendatory thereof and supplementary thereto, may change the gauge of its road on consent of the board of railroad commissioners and approval of the stockholders of said railroad company owning three-fourths in amount of the capital stock, said approval of said stockholders to be made at a special meeting of the stockholders of said company called for that purpose; and upon like consent of said board of railroad commissioners, and upon like approval of the stockholders of said railroad company owning three-fourths in amount of the said capital stock of said company, the floating and bonded indebtedness of said railroad company may be increased to an amount necessary to make such change of gauge and to provide for the operating expenses of said railroad, notwithstanding restrictions or limitations contained in the original certificate of incorporation of said railroad company.

## CHAP. 294, LAWS OF 1891.

AN ACT in relation to elevated railways in cities.

When elevated road may abandon part of its route; proceedings in such case.

SECTION 1. Any company operating an elevated railway or railways in any city of this state for the transportation of passengers, mails or freight, and which, prior to the passage of this act shall have built and operated six-tenths of its route as set forth and embodied in its articles of incorporation, may declare relinquished\* and abandoned any portion of its said route, which it may deem no longer necessary for the successful operation of its road and the convenience of the public. Such declaration of

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\*So in the original.

abandonment to be valid, shall be adopted by the board of directors, under the seal of such company, and shall be submitted to the stockholders thereof at a meeting called for the purpose of taking the same into consideration. Due notice of the time and place of holding said meeting, and stating the object thereof shall be given by the company to its stockholders by written or printed notices addressed to each of the persons in whose name the capital stock of the company stands on the books thereof, at the address of such persons as stated on the books, or as known to the secretary of the company, and delivered or mailed to such persons, or the legal representatives of such persons, respectively, at least thirty days before the time of holding the meeting of such company, and also by a general notice published daily for at least four weeks in some newspaper last designated for the publication of the session laws or of judicial proceedings and legal notices in the county where the route of such company is located; and at the said meeting of stockholders the declaration of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy. and if two-thirds of all the votes of the stockholders cast in person or by proxy at said meeting shall be for the adoption of said declaration of abandonment, then that fact shall be certified thereon by the secretary of the company under the seal thereof, and the declaration so adopted shall be submitted for approval to the state board of railroad commissioners, and if approved by them, such approval shall be indorsed thereon. and the said declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing such portion of said route designated. in such declaration of such company shall be deemed to be abandoned. A copy of such declaration of abandonment, duly certified by the secretary of state, under his official seal, shall be presumptive evidence in all courts and places of the facts which it recites, and of the regularity of the proceedings resulting in such abandonment.

See Article V, Railroad Law, *ante*.

## CHAP. 360, LAWS OF 1891.

AN ACT to confer upon the board of railroad commissioners of the state of New York authority to compel the lighting and ventilation of all tunnels within this state which are used by steam railroads.

SECTION 1. The board of railroad commissioners of the state of New York are hereby authorized, empowered and given full and complete authority to require and compel all tunnels used or to be used by railroads operated by steam in this state to be properly ventilated, in such manner and by such means and mechanical appliances as said board of railroad commissioners, or a majority of the same, may direct.

§ 2. The board of railroad commissioners of this state are also hereby authorized, empowered and given full and complete authority to require and compel all tunnels used, or to be used by railroads operated by steam in this state, to be properly lighted by electricity or otherwise, or by such means or in such manner as said board of railroad commissioners, or a majority of the same, may direct.

§ 3. Whenever said board of railroad commissioners of this state, or a majority thereof, shall cause to be personally served upon any railroad corporation controlling any tunnel, or part of a tunnel, in this state for the purpose of operating a railroad or moving, hauling or propelling cars therein by steam by delivering a copy personally to the president, general manager or any director of said corporation of a notice or order, signed by a majority of said board of railroad commissioners, stating and specifying the structures to be erected, the manner, means, mechanical appliance and apparatus to be used in lighting or ventilating any tunnel or tunnels used by said corporation for the purpose of moving, hauling or propelling cars by steam therein as aforesaid, said corporation shall, within thirty days from and after the service of said notice or order as aforesaid, cause said tunnel or tunnels so used by it as aforesaid to be lighted or ventilated, or both, in the manner and by the means and use of the mechanical apparatus and appliances specified and pointed out in said notice or order.

§ 4. After the expiration of thirty days from the service of said order or notice specified in the preceding section, as therein directed, if said corporation shall not have fully complied with the provisions and requirements of said notice or order as aforesaid and as therein directed and required, said board of railroad commissioners, or a majority of said board, may apply to the supreme court of this state for a writ of mandamus to compel said corporation or corporations so neglecting or refusing to obey and comply with the provisions of said order or notice to comply with and obey the provisions and requirements of said notice or order, and said court shall have full power and authority to hear and determine said matter, and, after giving the corporation or corporations proceeded against an opportunity to be heard in its or their defense, to compel said corporation or corporations so proceeded against to obey said order or notice, and forthwith comply with and carry out the provisions and requirements therein contained.

§ 5. Every corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and may be indicted therefor, and may be compelled to appear and plead to an indictment therefor in the person of its president, secretary, treasurer or any director thereof, and a bench warrant may issue out of any competent court to compel such attendance and pleading, and upon conviction thereof, punished by a fine of one thousand dollars, and an additional fine of five hundred dollars a day for each and every day or part of a day after thirty days from the due service of said notice or order that said corporation shall refuse or neglect to obey and carry out the requirements and provisions of the same, and duly sentenced to pay the same.

§ 6. It shall be the duty of the district attorney prosecuting any corporation for a violation of any of the provisions of this act, that shall be convicted thereof and sentenced to pay a fine therefor, to cause a judgment-roll to be made up, consisting of the indictment orders and sentence of the court and a formal judgment, to be prepared by him, which judgment shall be duly signed by the clerk of the county in which said trial took place;

said judgment-roll shall be filed by said county clerk and said judgment shall be duly recorded in the book of judgments in said county and duly entered and docketed by said county clerk in said county the same as if said judgment had been obtained in a civil action, and said judgment so duly entered and docketed shall become and be a lien upon all of the real estate of said corporation against which the same is obtained, and the collection thereof may be enforced by execution to be issued and signed by the district attorney of the county where the trial of said indictment took place, in the same manner and to the same extent as executions are collected in civil action.

§ 7. In cities in this state having a population of one million inhabitants or over, where tunnels are or may hereafter be operated or controlled by any railroad corporation such portions of any mechanical or other devices or appliances as may be required under the provisions of this act to be constructed on or above the surface of any streets, avenues or other places under which such tunnels may be built, shall be subject as to form, material and construction, to the approval of the local authorities of such cities, except that in the city of New York such approval shall be by a majority vote of the mayor, the comptroller, the commissioner of public works and the president of the department of public parks of said city.

#### CHAP. 425, LAWS OF 1892.

AN ACT to authorize the state engineer and surveyor to file certain reports with the board of railroad commissioners.

SECTION 1. The state engineer and surveyor is hereby authorized and directed, within ten days after the passage of this act, to file with the board of railroad commissioners all original reports from railroad corporations now in his custody and filed in his office in pursuance of section thirty-one of chapter one hundred and forty of the laws of eighteen hundred and fifty.

## CHAP. 604, LAWS OF 1892.

AN ACT for the relief of street surface railroad companies organized under chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four.

SECTION 1. Any street railroad company now organized under chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, which shall have heretofore constructed and is now operating any extension or branch of its railroad along any streets or highways or portion thereof within any county named in its articles of association, in a city not exceeding in population fifty thousand inhabitants, and shall heretofore have obtained the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having control of that portion of a street or highway upon which it has constructed or operated such railroad, is hereby authorized to operate and maintain the same respectively in like manner and as fully as if the said streets and highways, or portions thereof, were fully named and described in its articles of association, and upon filing in the office of the secretary of state a certificate signed by its board of directors, which certificate shall contain a statement of the names of cities, towns, villages and counties, and the names or descriptions of the streets, avenues and highways in which such extension or branch has been constructed the places from and to which the same has been constructed and is to be maintained and operated, and the length thereof, as near as may be; thereupon the said extensions and branches shall be deemed and considered a part of the lines of railway of such corporation from the date of the filing thereof, with the same force and effect as if the same were fully named and described in its original articles of association, and all corporate action relating to the construction, maintenance and operation of such extensions or creating liens upon the same by the said corporation, are hereby validated and confirmed.

§ 2. Nothing in this act contained shall affect or impair any vested right or any pending litigation.

See sections 90 and 106, Railroad Law, *ante*; chap. 679, Laws of 1893, *post*.

#### CHAP. 711, LAWS OF 1892.

AN ACT to provide for and limit the hours of service on railroads.

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§ 4. Any railroad company or corporation, or any officer, agent or employe of any such company or corporation, violating or permitting the violation of any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of five hundred dollars for each offense.

See decision of Court of Appeals under this act, 136 N. Y., 554.

See, also, subdivision 4, section 384-h, Penal Code, *post*.

See section 7, Labor Law, *post*.

#### CHAP. 238, LAWS OF 1893.

AN ACT in relation to filing amended affidavits to certificates of incorporation of railroad companies.

SECTION 1. Where it does not appear by the affidavit endorsed on or annexed to any certificate of incorporation, or articles of association of any railroad company, filed under the laws of this state, that the amount of capital stock required by the provisions of said laws to be paid in good faith and in cash to the directors named in such certificate has been so paid, or where the affidavit required by law is omitted and where such payment has been made to the directors named in said certificate or articles, or any of them, for the use of the company prior to the passage of this act, an affidavit of at least three of the directors named in said certificate, stating that at least the amount of capital stock of such corporation required by the law in force at the time of filing said certificate or articles to be subscribed thereto, has been heretofore subscribed for in good faith and that the amount required by the law in force at the time of filing said certificate to be paid on subscriptions in good faith and in cash to the

directors named in the certificate of incorporation has been paid heretofore in cash and in good faith to the directors named in said articles of association, or any of them, for the use of said corporation and that it is intended in good faith to build, construct, maintain and operate the road mentioned in said certificate may be filed in the office of the secretary of state, which affidavit shall be annexed to said certificate of incorporation and upon such filing said certificate, or articles shall for all purposes have the same force and effect as if an affidavit in all respects regular and in conformity with law had been annexed to said certificate or articles when said certificate was filed and as if a subscription and payment in all respects sufficient and in conformity with law had been made to the directors named in the articles of association or certificate, prior to the original filing of said articles or certificate, and said certificate of incorporation and the original filing thereof shall be and be deemed valid from the time of such original filing and such corporation shall be and be deemed a valid corporation from said time of original filing and shall now and hereafter have all the rights, privileges, powers and franchises to which if a valid corporation it would have been entitled by law at the time of such original filing together with such other rights, privileges, powers and franchises as have been since or may hereafter be granted by law to such valid corporations, provided that nothing herein contained shall affect or impair any vested right; and provided that the word "heretofore" and the words "prior to the passage of this act" shall be taken to refer to the time of passage of the amendatory act under which this section as herein framed is enacted. A copy of said certificate or articles of association with a copy of said affidavit hereinabove authorized, certified to be a copy by the secretary of state or his deputy shall in all courts and places and for all purposes be presumptive evidence of the incorporation of such corporation and of the facts stated in said certificate and affidavit. This act as here amended shall not apply to nor affect any street surface railroad company the route of which in whole



or in part lies within any city of the first or second class in this state, and shall not apply to nor affect any railroad corporation incorporated under any private or local bill or act.

Thus amended by chap. 627, Laws of 1903.

See section 2 and section 3, Railroad Law, and section 7, General Corporation Law, *ante*.

#### CHAP. 239, LAWS OF 1893.

AN ACT in relation to the intersections and crossings of the tracks and roadbeds of certain railroads laid in, across or upon the highways, streets, avenues or roads of the cities, towns and villages of the state.

SECTION 1. Whenever the railroad or route of any street surface railroad corporation shall intersect and cross, or shall cross the tracks and roadbed of any railroad, operated by locomotive, steam or other power, which are laid in, across or upon the surface of any street, avenue, road or highway in any city, town or village of the state, having less than five hundred thousand inhabitants, and such street surface railroad corporation having been unable to agree with the corporation owning the tracks and roadbed so intersected or to be intersected and crossed, as to the line or lines, grade or grades, points or manner of such intersection and crossing, or upon the compensation to be made therefor, shall have applied to the court by petition to appoint commissioners to determine the same, the court shall upon application made by such street surface railroad corporation, at, or after, the time of the appointment of such commissioners, or if an answer to the petition of such street surface railroad corporation has been interposed, at any time thereafter, direct that such street surface railroad corporation, be permitted to lay its tracks across and to intersect, upon the surface of the street, avenue, road or highway, the tracks and roadbed of such railroad operated by locomotive, steam, or other power, provided, such street surface railroad corporation shall at the time of obtaining such order make and file with the clerk of said court, its bond or undertaking in writing, in an amount and with surety or sureties to be approved by the court, conditioned for

the full and faithful performance by such street surface railroad corporation of any and all conditions and requirements which may be imposed by said commissioners and be affirmed by the court, in determining the line or lines, grade or grades, points or manner of such intersection and crossing and as to the amount of compensation to be paid therefor, and also conditioned to conform such crossing and intersection made by virtue of such order of the court to the requirements made by said commissioners as affirmed by the court.

§ 2. No street surface railroad shall be allowed to lay its tracks at grade across the tracks or roadbed of any railroad operated by locomotive steam power at any point where there are three or more tracks of the steam road proposed to be crossed, which tracks have been constructed and in operation at least two years, unless the written consent of the state railroad commissioners be first obtained for such crossing at grade. But this section shall not affect the operation of section one of this act in any suit or proceeding now pending nor any renewals of said pending suit or proceeding brought for any cause.

See sections 12, 35 and 68, Railroad Law, *ante*.

See 75 App. Div., 412; 175 N. Y., mem. 6.

## CHAP. 338, LAWS OF 1893.

AN ACT in relation to agriculture, constituting articles one, two, three, four, and five of chapter thirty-three of the general laws.

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### Suppression of infectious and contagious disease.

§ 60. Whenever any infections or contagious disease, affecting domestic animals shall exist, be brought into or break out in this state the commissioner of agriculture shall take measures to promptly suppress the same, and to prevent such disease from spreading. The local boards of health shall notify the commissioners of the existence of infectious or contagious disease affecting domestic animals in the districts subject to their jurisdiction. Any person or persons importing or bringing into this state neat

cattle for dairy or breeding purposes shall report immediately upon bringing such cattle into the state to the commissioner of agriculture in writing, giving a statement of the number of cattle thus brought in, the place where they were procured, the lines over which they were brought and their point of destination within the state, stating when they will arrive at such point of destination, and upon the filing with the commissioner of agriculture at the time of making the said report, a certificate issued by duly authorized veterinary practitioner, to the effect that he has duly examined said animal or animals and that said animals are free from any infectious or contagious disease, the commissioner of agriculture may issue a permit to said person or persons to remove said cattle immediately. Otherwise, said person or persons shall hold or detain such animals at least forty-eight hours at such point of destination for inspection and examination, provided they are not sooner examined or inspected, by the commissioner of agriculture or his duly authorized agent or agents. Each animal brought into the state in violation of the above provisions shall constitute a separate and distinct violation of the agricultural law. The provisions of this section, relating to the importation of neat cattle for dairy or breeding purposes, shall not apply to cattle imported into this state at a point where there is federal inspection.

Thus amended by chap. 214, Laws of 1903, taking effect July 1, 1903.

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#### Detention and destruction of animals.

§ 63. The commissioner or an assistant commissioner, may order all or any animals coming into the state to be detained at any place or places for the purpose of inspection and examination. He may prescribe regulations for the destruction of animals affected with infectious or contagious disease, and for the proper disposal of their hides and carcasses, and of all objects which might carry infection and contagion. Whenever, in his judgment necessary, for the more speedy and economical suppression or prevention of the spread of any such disease, he may

cause to be slaughtered, and to be afterwards disposed of, in such manner as he may deem expedient, any animal or animals, which, by contact or association with diseased animals, or by other exposure to infection or contagion, may be considered or suspected to be liable to contract or communicate the disease sought to be suppressed or prevented. The commissioner may direct that an animal shall be condemned, quarantined or slaughtered as tuberculous, under the provisions of this article, if it shall be found to be tuberculous by a physical examination. If the owner of animals suspected of being tuberculous desires to have such animals tested with tuberculin and enters into a written agreement with the state in the manner prescribed by the commissioner of agriculture, before such test is made, to the effect that he will disinfect his premises and either consent to the slaughter of the animals responding to such test, or hold them and their products in strict quarantine, pursuant to the directions of the commissioner of agriculture, such test shall be made by a medical or veterinary practitioner designated by the commissioner. The commissioner may also in his discretion order such tuberculin test to be made, and if the animal responds to such test, he may cause such animal to be slaughtered or held in strict quarantine.

Thus amended by chap. 321, Laws of 1901.

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#### Regulations and the enforcement thereof.

§ 65. The commissioner may prescribe such regulations as in his judgment may be thought suited for the suppression or prevention of the spread of any such disease, and for the disinfection of all premises, buildings, railway cars, vessels, and other objects from or by means of which infection or contagion may take place or be conveyed. He may alter or modify, from time to time, as he may deem expedient, the terms of all notices, orders and regulations issued or made by him, and may at any time cancel or withdraw the same. He may call upon the sheriff or deputy sheriff, to carry out and enforce the provisions of any

notice, order or regulation which he may make, and all such sheriffs and deputy sheriffs shall obey and observe all orders and instructions which they may receive from him in the premises. If the commissioner shall quarantine any particular district or territory for the purpose of stopping or preventing the spread of the disease known as rabies, and if any dog be found loose within the said quarantine district in violation of said quarantine or regulation, any person may kill or cause to be killed such dog and shall not be held liable for damages for such killing.

Thus amended by chap. 321, Laws of 1901.

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#### **Federal regulations.**

§ 70-c. The commissioner of agriculture may accept, in behalf of the state, the rules and regulations prepared and adopted by the commissioner of agriculture or the secretary or department of agriculture of the United States, under any act of congress for the establishment of a bureau of animal industry or to prevent the exportation of diseased cattle or to provide means for the extirpation and suppression of pleuro-pneumonia and other contagious diseases among domestic animals and shall co-operate with the authorities of the United States in the enforcement of the provisions of any such act.

Thus amended by chap. 321, Laws of 1901.

#### **Rights of federal inspectors.**

§ 70-d. The inspectors of the bureau of animal industry of the United States shall have the right of inspection, quarantine and condemnation of animals affected with any contagious, infectious or communicable disease, or suspected to be so affected or that may have been exposed to any such disease, and for such purposes they may enter upon any ground or premises; they may call the sheriffs, constables and peace officers to assist them in discharge of their duties in carrying out the provisions of any such act; and all sheriffs, constables and peace officers shall assist such inspectors when so requested, and such inspectors shall have the same powers and protection as peace officers,

while engaged in the discharge of their duties. All animals entering the state, which pass inspection by the federal authorities, shall be permitted to proceed to place of destination without further inspection under this act. This state shall not be liable for any damages or expenses caused or made by such inspectors.

Thus amended by chap. 321, Laws of 1901.

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§ 70-e. No person shall slaughter or expose for sale, or sell any calf or carcass of the same or any part thereof, unless it is in good healthy condition. No person shall sell or expose for sale any such calf or carcass of the same or any part thereof, except the hide unless it was, if killed at least four weeks of age at the time of killing. No person or persons shall bring or cause to be brought into any city, town or village any calf or carcass of the same or any part thereof for the purposes of selling, offering or exposing the same for sale, unless it is in a good healthy condition and no person or persons shall bring any such calf or carcass of the same or any part thereof except the hide into any city, town or village for the purpose of selling, offering or exposing the same for sale, unless the calf, if killed, was four weeks of age at the time of killing, provided however that the provisions of this statute shall not apply to any calf or carcass of the same or any part thereof, which is slaughtered, sold, offered or exposed for sale, for any other purpose than for food. Any person or persons exposing for sale, selling or shipping any calf or carcass of the same will be presumed to be so exposing, selling or shipping the said calf or carcass of the same for food. Any person or persons duly authorized by the commissioner of agriculture to examine any calf or veal offered or exposed for sale or kept with any stock of goods apparently exposed for sale and if such calf is under four weeks of age, or the veal is from a calf killed under four weeks of age, or from a calf in an unhealthy condition when killed, he may seize the same and cause it to be destroyed and disposed of in such manner as to make it impossible to be thereafter used for food.

Thus amended by chap. 171, Laws of 1905.

**Shipping veal.**

§ 70-f. On and after the passage of this act it shall be unlawful for any corporation, partnership, person or persons to ship to or from any part of this state any carcass or carcasses of a calf or calves or any part of such carcass except the hide, unless they shall attach to every carcass or part thereof so shipped in a conspicuous place a tag, that shall stay thereon during such transportation, stating the name or names of the person or persons who raised the calf, the name of the shipper, the points of shipping and the destination and the age of the calf.

**Receiving veal for shipment by common carriers.**

§ 70-g. On and after the passage of this act, no railroad company, express company, steamboat company, or other common carrier, shall carry or receive for transportation any carcass or carcasses of calves, or any part of the same except the hide, unless the said carcass or carcasses or parts thereof shall be tagged as herein provided.

Sections 70-e, 70-f and 70-g, added by chapter 30, Laws 1902.

See chapter 491, Laws 1898, *post*.

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**The prevention of disease in fruit trees and the extirpation of insect pests that infest the same.**

§ 82. No person shall knowingly or wilfully keep any peach, almond, apricot or nectarine trees affected with the contagious disease known as yellows. Nor shall any person knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot, nor any tree, shrub or plant infested with or by San Jose scale or other insect pest dangerously injurious to or destructive of the trees, shrubs or other plants; every such tree, shrub or plant shall be a public nuisance and as such shall be abated and no damage shall be awarded for entering upon premises upon which there are trees, shrubs or plants infected with yellows or black knot or infested with San Jose scale, for the purpose of legally inspecting the same nor shall any damage be awarded for the

destruction by the commissioner of agriculture, or his duly authorized agents or representatives of such trees, shrubs or plants, or altogether destroying such tree if necessary to suppress such disease, if done in accordance with the provisions of this article, except as otherwise herein provided. Every person, when he becomes aware of the existence of such disease or insect pest in any tree owned by him, shall forthwith report the same to the commissioner of agriculture at Albany, New York, and the said commissioner shall take such action as the law provides. If in the judgment of said commissioner of agriculture or the person or persons representing him the trees, shrubs or other plants so infected, infested or diseased should be destroyed, then such destruction shall be carried on and completed under the supervision of the commissioner of agriculture or the person or persons duly appointed by him and authorized so to do, without unnecessary delay, but the owner of the trees, shrubs or plants shall be notified immediately upon its being determined that such trees, shrubs or plants should be destroyed by a notice in writing signed by said commissioner or the person or persons representing him, which said notice in writing shall be delivered in person to the owner of such trees, shrubs or plants, or left at the usual place of residence of such owner, or if such owner be not a resident of the town, by leaving such notice with the person in charge of the premises, trees, shrubs or plants or in whose possession they may be; such notice shall contain a brief statement of the facts found to exist whereby it is deemed necessary to destroy such trees, shrubs or plants, and shall call attention to the law under which it is proposed to destroy them, and the owner shall within ten days from the date upon which such notice shall have been received, remove and burn all such diseased or infested trees, shrubs or plants. If however, in the judgment of the commissioner of agriculture, any trees, shrubs or plants infected with any disease or infested with dangerously injurious insects can be treated with sufficient remedies, he may direct such treatment to be carried out by



the owner under the direction of the commissioner's agent or agents. In cases of objections to the findings of the inspector or agent of the commissioner of agriculture an appeal may be made to the commissioner of agriculture whose decision shall be final. An appeal must be taken within three days from service of said notice, and shall act as a stay of proceedings until it is heard and decided. When the commissioner of agriculture, or the person or persons appointed by him, shall determine that any tree or trees, shrubs or other plants must be treated or destroyed forthwith, he may employ all necessary assistance for that purpose, and such person or persons, agent or agents, employee or employees, may enter upon any or all premises in any city or town necessary for the purposes of such treatment, removal or destruction.

Thus amended by chap. 519, Laws of 1902. This section was also amended by chap. 27, Laws of 1902, taking effect immediately. Chap. 27 was superseded by chap. 519.

#### **Appointment and duties of the agent of the commissioner of agriculture.**

§ 83. When the commissioner of agriculture knows or has reason to believe that any such contagious disease exists, or that there is good reason to believe that it exists, or danger is justly apprehended of its introduction in any town or city in the state, or that any dangerously injurious insect pest exists within this state, and has reason to believe that danger may be justly apprehended from its existence, he shall forthwith send some competent person and such agent or agents as he may deem necessary to assist extirpating said pest or pests, disease or diseases, and the said commissioner of agriculture is hereby authorized and empowered to take such steps and do whatever may be deemed necessary to so control or prevent the spread or extirpate said pest or pests, disease or diseases, and he shall cause an examination to be made at least once each year, prior to September first, of each and every nursery or other place where trees, shrubs or plants, commonly known as nursery stock, are

grown for sale, for the purpose of ascertaining whether the trees, shrubs or plants therein kept or propagated for sale are infected with any such contagious disease or diseases, or infested with such pest or pests. If after such examination it is found that the said trees, shrubs or other plants so examined are free in all respects from any such contagious or infectious disease or diseases, dangerously injurious pest or pests, the said commissioner or his duly authorized agent or other person designated to make such examination, shall thereupon issue to the owner or proprietor of the said stock thus examined a certificate setting forth the fact that the stock so examined is apparently free from any and all such disease or diseases, pest or pests. Should any nurseryman, agent or dealer or broker send out or deliver within the state, trees, vines, shrubs, plants, buds or cuttings, commonly known as nursery stock, and which are subject to the attacks of insects and diseases above provided for, unless he has in his possession a copy of said certificate, dated within a year thereof, deface or destroy such certificate, or wrongfully be in possession of such certificate, he shall be guilty of a misdemeanor. All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation, shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. Any person consigning for shipment or shipping nursery stock as above without such certificate attached shall be guilty of a misdemeanor. All transportation companies within this state receiving or carrying nursery stock from any point without the state to any point within the state shall immediately, upon receiving such consignments, notify the commissioner of agriculture of the fact that such consignment is in their possession, giving the name of the consignor and consignee, and the point of destination of such consignment. All trees, plants, shrubs, buds or cuttings, commonly called nursery stock, grown in any nursery in this state, in which San Jose scale has been found within two years of the date of the dissemination of said nursery stock or grown in said nursery within one-half a mile of where said scale was found, and also all nursery stock from out-

side of this state, disseminated or planted in this state, after the first day of July nineteen hundred and two, must be fumigated with hydrocyanic gas, in such manner as may be directed by the commissioner of agriculture of this state. Such fumigation must be done by the grower, consignor or consignee of such stock before planting, dissemination or reshipment, except such trees, shrubs, plants, buds or cuttings grown in this state as are planted by the grower or propagator for himself, or such as from its nature or state of growth would be exempt; in such cases the said commissioner shall declare such trees, shrubs, plants, buds or cuttings free from such treatment. All nursery stock brought into this state from outside of this state must be accompanied by a certificate from the consignor that it has been fumigated as aforesaid. Should any such stock arrive without such certificate, the transportation company delivering it shall at once notify the said commissioner to that effect. The consignee shall also at once notify him of that fact, and shall proceed to fumigate said stock, as directed by the commissioner of agriculture without delay. Should any nursery stock purchased within one year be found infested with San Jose scale on the premises of any nurseryman, it shall not be considered such an infestation as to require the fumigation of other stock not so purchased. The words "nursery stock" wherever used in this article shall apply to and include all trees, shrubs, plants, buds, willow' grown for nursery, baskets, or other commercial purposes or cuttings, whether grown in a nursery or elsewhere so far as it relates to fumigation. The provisions of this and the preceding section shall not apply to florists green house plants, flowers or cuttings commonly known as green house stock, and no certificate shall be required for shipment of native stock collected in the United States, not grown in nurseries, nor to stock so shipped into the state that its sale and shipment become either inter-state commerce traffic or commerce with foreign nations.

Thus amended by chap. 519, Laws of 1902.

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Statements to be attached to packages; contents; analysis.

§ 121. No manufacturer, firm, association, corporation or person shall sell, offer or expose for sale or for distribution in this state any concentrated commercial feeding stuff used for feeding live stock, unless each car or other amount shipped in bulk shall have affixed to it or be accompanied by a plainly printed statement clearly and truly certifying the name or trade-mark under which the article is sold, the name of the manufacturer, the place of manufacture, the shipper and the place of business and a statement of the constituents of such concentrated feeding stuff as shown by a chemical analysis. Such statement to show the percentage it contains of crude protein and of crude fat. If such concentrated feeding stuff is in packages such statement shall be affixed to the package, and shall also state the number of pounds in such package. Whenever any feeding stuff is sold at retail in bulk or in packages belonging to the purchaser, the agent or dealer, upon request of the purchaser shall furnish to him the certified statement named in this section.

Thus amended by chap. 558, Laws of 1904.

#### CHAP. 543, LAWS OF 1893.

AN ACT to promote the safety of railway employees by compelling the equipment of freight cars with continuous power or air brakes, and locomotives with driving-wheel brakes.

SECTION 1. That from and after the first day of January, eighteen hundred and ninety-five, it shall be unlawful for any railroad company to use within the state on its line or lines any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system.

§ 2. That on and after the first day of January, eighteen hundred and ninety-eight, the use of cars known and designated as "coal jimmies" in any form shall be unlawful within the state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile, under a penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general in the name of the people and in the judicial

district where the principal office of the company within the state is located. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use thereof upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile.

Thus amended by chap. 549, Laws of 1900.

§ 3. That on and after the first day of January, nineteen hundred and one, it shall be unlawful for any railroad or other company to haul or permit to be hauled or used on its line or lines within this state any freight train that has not a sufficient number of cars in it so equipped with continuous power or air brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Thus amended by chap. 549, Laws of 1900.

§ 4. That within sixty days from the passage of this act every railroad or other company operating a line of railroad within the state shall file with the board of railroad commissioners at its office in Albany a verified statement of the total number of freight cars owned or operated by it, the number of such cars equipped with such continuous power or air brakes and the number unequipped, and shall thereafter annually and in the month of January, for the ensuing ten years, file with said board a verified report of the number of cars so equipped in each year and the number of cars, if any, remaining unequipped.

§ 5. That on and after January first, nineteen hundred and one any railroad or other company hauling or permitting to be hauled on its line or lines any freight train in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in any action to be brought by the attorney-general in the name of the people and in the judicial district wherein the principal office of the company within the state is located, and it shall be the duty of the board of railroad commissioners of the state to notify the attorney-general of all such violations coming to its notice.

Thus amended by chap. 549, Laws of 1900.

§ 6. That the board of railroad commissioners may, from time to time, after full hearing given and for good cause shown, extend the time within which any company shall comply with the requirement of this act, not exceeding, however, four years from the first day of January, eighteen hundred and ninety-eight.

Thus amended by chap. 549, Laws of 1900.

§ 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Section 5 of chapter 549, Laws of 1900, provides that "all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

#### CHAP. 544, LAWS OF 1893.

AN ACT to promote the safety of railway employes by compelling the equipment of freight cars with automatic couplers.

SECTION 1. That from and after the passage of this act, every new freight car which is to be used in this state shall be equipped with couplers of the master car builders' type, which can be coupled automatically by impact, and which may, except in cases of accident, be uncoupled without the necessity of a person going between the cars.

§ 2. That from and after the passage of this act, in addition to such new freight cars, there shall be equipped each year with such couplers, by every company operating a line or lines of railroad within the state, at least twenty per centum of all freight cars owned or operated by such companies, and used within the state, which are not so equipped, except certain cars known and designated as "coal jimmies," and that on and after the first day of January, eighteen hundred and ninety-eight, the use of said "coal jimmies" in any form shall be unlawful within this state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile, under penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general, in the name of the people, and in the judicial district where the principal office of the company within

the state is located. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use therefor\* upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile.

Thus amended by chap. 485, Laws of 1896.

§ 3. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any railroad or other company to haul, or permit to be hauled or used, on its line or lines within the state, any freight car not equipped with couplers of the master car builders' type, and coupling automatically by impact, and which can be uncoupled, except in cases of accident, without the necessity of men going between the ends of the cars.

§ 4. That within sixty days from the passage of this act, every railroad or other company operating a line of railroad within the state, shall file with the board of railroad commissioners, at its office in Albany, a verified statement of the total number of freight cars owned or operated by it, the number of such cars equipped with the automatic couplers, and the number unequipped; and shall thereafter annually, and in the month of January, for the ensuing five years, file with said board a verified report of the number of cars so equipped in each year, and the number of cars, if any, remaining unequipped.

§ 5. That on and after January first, eighteen hundred and ninety-eight, any railroad or other company using, or permitting to be used, on its line or lines, any freight car not equipped with couplers as provided for in this act, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in an action to be brought by the attorney-general, in the name of the people, and in the judicial district wherein the principal office of the company within the state is located; and it shall be the duty of the board of railroad commissioners of the state to notify the attorney-general of all such violations coming to its notice.

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\*So in the original.

§ 6. That the board of railroad commissioners may, from time to time, after full hearing given and for good cause shown, exempt any company from the provisions of this act, as to the equipment of twenty per cent of its cars in any particular year or years, and may extend the time within which any company shall comply with the requirements of this act, not exceeding however, five years from the first day of January, eighteen hundred and ninety-eight.

§ 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

#### CHAP. 661, LAWS OF 1893.

AN ACT in relation to the public health, constituting chapter twenty-five of the general laws.

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#### Local boards of health.

§ 20. There shall continue to be local boards of health and health officers in the several cities, villages and towns of the state. In the cities except New York, Brooklyn, Buffalo, Albany and Yonkers, the board shall consist of the mayor of the city, who shall be its president, and, at least six other persons, one of whom shall be a competent physician, who shall be appointed by the common council, upon the nomination of the mayor, and shall hold office for three years. Appointments of members of such boards shall be made for such shorter terms as at any time may be necessary, in order that the terms of two appointed members shall expire annually. In the cities except New York, Brooklyn, Buffalo, Albany and Yonkers and such other cities whose charters otherwise provide the board shall appoint a competent physician, not one of its members, to be the health officer of the city and shall fill any vacancy that now exists or may hereafter exist from expiration of term or otherwise in the office of health officer of the city. In villages the board shall consist of not less than three nor more than seven persons, not trustees of the village, who shall be appointed at the first



meeting of the board of trustees of such village, after the next annual election of the village; the members of said board of health shall at their first meeting divide themselves by lot into three classes, whose terms of office shall expire respectively in one, two and three years from the annual election held prior to their appointment; from and after the appointment of said board as above provided, the appointment of the successors of said members shall be made immediately after the annual elections of said village and shall continue in office until their successors are appointed unless removed therefrom; provided, however, that upon failure to appoint such board of health at such first meeting such appointment may be made at any subsequent meeting, in the event of no appointment having been made by the county judge as hereinafter provided. Every such village board shall elect a president and secretary. In towns the board of health shall consist of the town board and another citizen of the town of full age biennially appointed by the town board at a meeting thereof after each biennial town meeting for the term of two years from and after such town meeting and until his successor is appointed. The state commissioner of health shall appoint for each municipality except in the cities of the state on the nomination of the local board of health, a competent physician, not a member of the local board of health, to be the health officer of the municipality. The term of office of the health officer shall be four years and he shall hold office until the appointment of his successor. If a local board of health fails to nominate a physician for appointment to the position of health officer within thirty days after the expiration of the term of office of the health officer, or if a vacancy in the office is not filled within thirty days, the state commissioner of health shall appoint a competent physician to the position, or, should a local board of health nominate a physician for appointment to the position of health officer, who, in the judgment of the state commissioner of health is not properly qualified for appointment to the position, the state commissioner of health shall notify the local board of health of such fact, and thereupon such local board of health shall within thirty

days from the date of such notice present to the state commissioner of health the name of another physician for appointment to the position of health officer, failing in which, the state commissioner of health shall appoint a physician to the position. He may be removed for just cause by the local board of health after a hearing, such removal must be approved by the state commissioner of health. The health officer need not reside within the village or town for which he shall be chosen, but unless he shall, he must reside in an adjoining town. If the proper authorities shall not fill any vacancies occurring in the membership of any local board within thirty days after the happening of such vacancy, the county judge of the county shall appoint a competent person to fill the vacancy for the unexpired term, which appointment shall be immediately filed in the office of the county clerk, and a duplicate thereof filed with the clerk of the municipality for which such appointment is made. Notice of the membership and organization of every local board of health shall be forthwith given by such board to the state department of health. The term municipality, when used in this article, means the city, village or town for which any such local board may be or is appointed.

Thus amended by chap. 484, Laws of 1904.

#### General powers and duties of local boards of health.

\* § 21. Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof where in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation. In addition to his compensation so fixed, the board of health may allow the reason-

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\*So in original.

able expenses of said health officer in going to, attending and returning from, the annual sanitary conference of health officers, or equivalent meeting, held yearly within the state, and may also in its judgment whenever the services rendered by its health officer during any year are extraordinary, or extra hazardous, by reason of epidemic, or otherwise, allow to him such further sum in addition to said fixed compensation as shall be audited by the town board of a town or by the board of trustees of a village which said expenses and said additional compensation shall be a charge upon and paid by the municipality as provided in section thirty of this act. Every such local board shall make and publish from time to time all such orders and regulations as they may deem necessary and proper for the preservation of life and health, and the execution and enforcement of the public health law in the municipality. It shall make without publication thereof, such orders and regulations for the suppression of nuisances, and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon. It may employ such persons as shall be necessary to enable it to carry into effect its orders and regulations, and fix their compensation. It may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction. It may designate by resolution one of its members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as can not otherwise be subjected to its orders or regulations, and a warrant to the sheriff of the county to bring

to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality; and to maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations. Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing to the board of trustees of such village, stating and recommending what additions or alterations should in the judgment of such board of health be made with its reasons therefor, and thereupon such board of trustees shall immediately convene and consider such recommendations, and if approved by such board of trustees, the same shall be certified to the state department of health for its approval, and if such recommendations shall be approved by the state department of health, it shall be the duty of the board of trustees of such village, whether sufficient funds shall be on hand for such purpose or not, to forthwith make such additions to or alterations in the sewers of such village and execute such recommendations, and the expenses thereof shall be paid for by said village in the same manner as other village expenses are paid or in the same manner that other sewers may be paid for in that village and said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board of trustees shall have the right to acquire such lands, rights of way, or other easements, by gift,

or purchase, or in case the same can not be acquired by purchase the board of trustees may acquire the same by condemnation in the manner provided by law.

Thus amended by chap. 383, Laws of 1903. See also second section 21, following, as amended by chap. 222, Laws of 1903.

#### **General powers and duties of local boards of health.**

\* § 21. Every such local board of health shall meet at stated intervals to be fixed by it, in the municipality. The presiding officer of every such board may call special meetings thereof where in his judgment the protection of the public health of the municipality requires it, and he shall call such meeting upon the petition of at least twenty-five residents thereof, of full age, setting forth the necessity of such meeting. Every such local board shall prescribe the duties and powers of the local health officer, who shall be its chief executive officer, and direct him in the performance of his duties, and fix his compensation. Every such local board shall make and publish from time to time all such orders and regulations as they may deem necessary and proper for the preservation of life and health, and the execution and enforcement of the public health law in the municipality. It shall make without publication thereof, such orders and regulations for the suppression of nuisances, and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or post the same in some conspicuous place thereon. It may employ such persons as shall be necessary to enable it to carry into effect its orders and regulations, and fix their compensation. It may issue subpoenas, compel the attendance of witnesses, administer oaths to witnesses and compel them to testify, and for such purposes it shall have the same powers as a justice of the peace of the state in a civil action of which he has jurisdiction. It may designate by resolution one of the members to sign and issue such subpoenas. No subpoena shall be served outside the jurisdiction

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\*So in original.

of the board issuing it, and no witness shall be interrogated or compelled to testify upon matters not related to the public health. It may issue warrants to any constable or policeman of the municipality to apprehend and remove such persons as can not otherwise be subjected to its orders and regulations, and a warrant to the sheriff of the county to bring to its aid the power of the county whenever it shall be necessary to do so. Every warrant shall be forthwith executed by the officer to whom directed, who shall have the same powers and be subject to the same duties in the execution thereof, as if it had been duly issued out of a court of record of the state. Every such local board may prescribe and impose penalties for the violation of or failure to comply with any of its orders or regulations, not exceeding one hundred dollars for a single violation or failure, to be sued for and recovered by it in the name and for the benefit of the municipality; and to maintain actions in any court of competent jurisdiction to restrain by injunction such violations, or otherwise to enforce such orders and regulations. Whenever such local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing to the board of trustees of such village, stating and recommending what additions or alterations should in the judgment of such board of health be made with its reasons therefor, and thereupon such board of trustees shall immediately convene and consider such recommendations, and if approved by such board of trustees, the same shall be certified to the state department of health for its approval, and if such recommendations shall be approved by the state department of health, it shall be the duty of the board of trustees of such village to forthwith make such additions to or alterations in the sewers of such village and execute such recommendation, and the expenses of the construction thereof shall be assessed, collected and paid in the same manner as the expenses of constructing similar sewers in such village are assessed, collected and paid. If the expenses of such construction be assessed wholly upon the adjoining prop-

erty owners or jointly upon the village and adjoining property owners, the same shall be apportioned by the board of sewer commissioners of such village in the manner prescribed for the apportionment of the expense of constructing sewers by the village law. If the expenses of the construction thereof are payable wholly by said village such expenses shall be paid for by said village in the same manner as other village expenses are paid and said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board of trustees shall have the right to acquire such lands, rights of way, or other easements, as shall be necessary for the construction of such sewer, by gift, or purchase, or in case the same can not be acquired by purchase the board of trustees may acquire the same by condemnation in the manner provided by law.

Thus amended by chap. 222, Laws of 1903. See also first section 21, preceding, as amended by chap. 383, Laws of 1903.

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#### Burial and burial permits.

§ 23. Every such local board shall prescribe sanitary regulations for the burial and removal of corpses, and shall designate the persons who shall grant permits for such burial, and permits for the transportation of any corpse which is to be carried for burial beyond the county where the death occurred. Every undertaker, sexton or other person having charge of any corpse, shall procure a certificate of the death and the probable cause duly certified by the physician in attendance upon the deceased during his last illness, or by the coroner where an inquisition is required by law, and if no physician was in attendance, and no inquest has been held or required by law, an affidavit stating the circumstances, time and cause of death, and sworn to by some credible person known to the officer granting the permit, and there shall be no burial or removal of a corpse until such certificate or affidavit has been presented to the local board or to the person designated by it, and thereupon a permit for such burial

or removal has been obtained. When application is made for a permit to transport a corpse over any railroad or upon any passenger steamboat within the state, the board of health, or the officers to whom such application is made, shall require such corpse to be inclosed in a hermetically sealed casket of metal or other indestructible material, if the cause of death shall have been from a contagious or infectious disease.

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#### Nuisances.

§ 25. Every such board shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the municipality, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause or nuisances existing elsewhere are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same. The owners, agents and occupants of any such premises shall permit such sanitary examinations to be made, and the board shall furnish such owners, agents and occupants with a written statement of the results and conclusions of any such examination. Every such local board shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the municipality. Whenever the state department of health shall by notice to the presiding officer of any local board of health, direct him to convene such local board to take certain definite proceedings concerning which the state department of health shall be satisfied that the action recommended by them is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board, which shall take the action directed.

Thus amended by chap. 383, Laws of 1903.



**Removal of nuisances.**

§ 26. If the owner or occupant of any premises whereon any nuisance or condition deemed to be detrimental to the public health exist or the cause of the existence elsewhere, fails to comply with any order or regulation of any such local board for the suppression and removal of any such nuisance or other matter, in the judgment of the board detrimental to the public health, made, served or posted as required in this article, such boards or their servants or employes may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter. The expense of such suppression or removal shall be paid by the owner or occupant of such premises, or by the person who caused or maintained such nuisance or other matters, and the board may maintain an action in the name of the municipality to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality. Whenever the suppression or removal of such nuisance or conditions detrimental to health demand the immediate expenditure of money, every such local board of health shall be authorized to use for such purpose any money in the hands of the board, or may call on the city council, village trustees or town board for such money or it may borrow the same on the credit of the municipality. All such moneys so expended or borrowed shall be immediately repaid to the fund or source whence they were received on the recovery of the same by action or otherwise from the persons responsible for the expenses of suppression or removal.

Thus amended by chap. 383, Laws of 1903.

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**Jurisdiction of town and village boards.**

§ 29. A town board of health shall not have jurisdiction over any city or incorporated village or part of such city or village in such town if such city or village has an organized board of

health. The boards of health of any town and the incorporated villages therein, or any two or more towns and the incorporated villages therein, may unite, with the written approval of the state department of health, in a combined sanitary and registration district, and appoint for such district one health officer and registering officer, whose authority in all matters of general application shall be derived from the boards of health appointing him; and in special cases not of general application arising within the jurisdiction of but one board shall be derived from such board alone. When one or more towns and the incorporated villages therein unite in one registration district, the registrar of vital statistics of such combined district will be required to make separate returns to the state department of health of village and town certificates of births, marriages and deaths.

Thus amended by chap. 383, Laws of 1903.

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### **Mandamus.**

§ 31. The performance of any duty or the doing of any act enjoined, prescribed or required by this article, may be enforced by mandamus at the instance of the state department of health or its president or secretary, or of the local board of health, or of any citizen of full age resident of the municipality where the duty should be performed or the act done.

Thus amended by chap. 383, Laws of 1903.

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## **CHAP. 679, LAWS OF 1893.**

### **AN ACT for the relief of street surface railroad companies.**

SECTION 1. Any street surface railroad corporation which shall have heretofore constructed and is now operating any extension or branch of its railroad along any streets or highways or portion thereof in a city having less than fifty thousand inhabitants, or in any town adjoining such city, and which shall heretofore have obtained consent of the owners of one-half in value of the

property bounded on, and the consents also of the local authorities having control of that portion of the streets, roads or highways upon which such extension or branch is constructed and is being operated to the construction and operation of the same, is hereby authorized to operate and maintain any such branch or extension, upon filing in the office of the secretary of state a certificate, signed by its board of directors, which certificate shall contain a statement of the names of the cities, towns, villages and counties, and the names or description of the streets, avenues and highways in which such extensions or branches have been constructed, the places from and to which the same have been constructed and are to be maintained and operated and the length thereof as near as may be; thereupon said extensions and branches shall be deemed and considered a part of the lines of said railway from the date of the filing thereof, and all corporate action relating to the construction, maintenance and operation of such extensions or branches, or creating liens upon the same by said corporation are hereby validated and confirmed.

§ 2. Nothing in this act contained shall affect or impair any vested right or any pending litigation, nor shall any corporation which shall avail itself of the provisions of this act be deemed thereby to have waived any rights which it theretofore had to maintain and operate any branch or extension named in any certificate filed by it hereunder.

See sections 90 and 106, Railroad Law, chap. 604, Laws of 1892, *ante*.

#### \*CHAP. 743, LAWS OF 1894.

AN ACT to facilitate travel upon elevated railroads in the city of New York.

SECTION 1. Any passenger upon the Manhattan elevated railway who has paid the fare required for passage from any point on said railway east of Broadway, between the Battery and One Hundred and Twenty-ninth street, not exceeding five cents, shall be entitled to a continuous passage, without change of cars, on the suburban rapid transit railway or on any railway owned or

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\*While this is not a general act it is considered of enough importance to be printed here.

operated by the Manhattan railway company, within the city of New York, in connection with said Manhattan elevated railway from One Hundred and Twenty-ninth street, or other termini of the lines of said Manhattan elevated railway south of the Harlem river, to any station on the route of said suburban rapid transit railroad, or such other elevated railroad as may be operated by the Manhattan railway company north of the Harlem river, without the payment of additional fare; and any passenger on the suburban rapid transit railroad, or any elevated railway owned or operated by the Manhattan railway company in connection with the Manhattan elevated railroad, within the city of New York, running southward to One Hundred and Twenty-ninth street, or other termini of the Manhattan railroad, who has paid the fare required on said suburban rapid transit railroad to One Hundred and Twenty-ninth street in the city of New York, not exceeding five cents, shall be entitled to a continuous passage, without change of cars, over the Manhattan elevated railway to any station on its route east of Broadway, between One Hundred and Twenty-ninth street and the Battery, without the payment of additional fare.

#### CHAP. 240, LAWS OF 1895.

AN ACT to provide for licensing foreign stock corporations.

SECTION 1. Every foreign corporation except banking, fire, marine, casualty and life insurance companies, and corporations wholly engaged in carrying on manufactures in this state, co-operative fraternal insurance companies, endowment orders and building and loan associations, now authorized to do business in this state, under the provisions of chapter six hundred and eighty-seven of the laws of eighteen hundred and ninety-two, entitled "An act to amend the general corporation law," shall pay to the state treasurer for the use of the state, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, on the first day of December,

eighteen hundred and ninety-five, to be computed upon the basis of the amount of capital stock employed by it within this state during the year preceding that date, and every such foreign corporation which shall hereafter be authorized to do business in this state shall pay a like license fee for the privilege, to be computed upon the basis of the capital stock employed by it within this state for its business during the first year of carrying on its business in this state. The amount of capital upon which such taxes shall be paid shall be fixed by the comptroller, who shall have the same authority to examine the books and records in this state of such foreign corporations, and the employees thereof, and the same power to issue his warrant for the collection of such taxes, as he now has with regard to domestic corporations. Every such foreign corporation hereafter authorized to do business in this state shall, before receiving the certificate of authority provided by law, pay to the state treasurer, for the use of the state, the tax hereinbefore provided for. No action shall be maintained or recovery had in any of the courts of this state by such foreign corporation doing business in this state, without obtaining the certificate of authority prescribed by law, and a receipt for the license fee hereby imposed.

See section 181, Tax Law, *post*.

#### CHAP. 417, LAWS OF 1895.

AN ACT to regulate the exercise of their franchises by certain public corporations, by requiring them to afford facilities for the transaction of the public business, to certain public officers and employees.

SECTION 1. The mayor of each city of this State and the president of each incorporated village may issue, under the seal of his office, to each policeman and fireman appointed by the duly-constituted authorities of such city or village, a certificate of the appointment and qualification of such policeman or fireman as such, and specifying the duration of his term of office; and it shall thereupon be the duty of every street surface and elevated railroad company carrying on business within such city or village, to

transport every such policeman or fireman free of charge while he is traveling in the course of the performance of the duties of his office. Every telegraph or telephone company engaged in business within such city or village, shall afford to such policeman or fireman the use of its telegraph lines or telephones for the purpose of making and receiving reports and communications in the course of the performance of his official duties.

§ 2. Every policeman or fireman who shall permit any other person to use the certificate issued to him as provided by this act, or to present or make use of the same, except while acting in the course of the performance of his official duties, or who shall use such certificate after the expiration of his term of office or his resignation or removal therefrom, shall be deemed guilty of a misdemeanor.

Unconstitutional; see *Wilson v. United Traction Company*, 72 App. Div., p. 233.

See chap. 683, *Laws of 1897, post.*

#### CHAP. 1027, LAWS OF 1895.

AN ACT in relation to the issue of mileage books by railroad corporations.

SECTION 1. Every railroad corporation operating a railroad in this state, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile, and which does charge a maximum fare of more than two cents per mile, shall issue mileage books having either five hundred or one thousand coupons attached thereto, entitling the holder thereof, upon complying with the conditions hereof, to travel either five hundred or one thousand miles on the line or lines of such railroad, for which the corporation may charge a sum not to exceed two cents per mile. Such mileage books shall be kept for sale by such corporation at every ticket office of such corporation in an incorporated village or city, and any of such books shall be issued immediately upon application therefor. Upon presentation of such mileage book to a conductor on any train on any line of railroad owned or operated by

said railroad corporation, the holder thereof, or any member of his family or firm, or any salesman of his firm, shall be entitled to travel for a number of miles equal to the number of coupons detached by such conductor. Such mileage book shall entitle the holder thereof to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used. Any railroad corporation which shall refuse to issue a mileage book, as provided by this section, or in violation hereof, to accept such mileage book for transportation, shall forfeit fifty dollars, to be recovered by the party to whom such refusal is made; but no action can be maintained therefor unless commenced within one year after the cause of action accrues.

Thus amended by chap. 577, Laws of 1898.

Unconstitutional as to companies existing prior to its passage (162 N. Y. 230). See, also, 162 N. Y., 42, 171 N. Y., 566, as to companies formed since its passage. See, also, 86 App. Div., 379, and 179 N. Y., 589.

## CHAP. 112, LAWS OF 1896.

AN ACT in relation to the traffic in liquors, and for the taxation and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws.

### CHAPTER XXIX OF THE GENERAL LAWS.

#### The Liquor Tax Law.

Note.—Many sections of the Liquor Tax Law apply to railroad companies which receive liquor tax certificates. Having in mind the purposes sought to be fulfilled by this compilation of railroad laws it is thought best to publish here only certain portions.

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Excise taxes upon the business of trafficking in liquors; enumeration.

§ 11, subdivision 4. Upon the business of trafficking in liquors upon any car, steamboat or vessel within this state, to be drunk on such car or on any car connected therewith, or on such steamboat or vessel, or upon any boat or barge attached thereto, or

connected therewith there is assessed an excise tax, to be paid by every corporation, association, copartnership or person engaged in such traffic, and for each car, steamboat or vessel, boat or barge, upon which such traffic is carried on, the sum of three hundred dollars.

Subdivision 4, thus amended by chap. 115, Laws of 1903.

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§ 23, subdivision 2. No corporation or association incorporated or organized under the laws of another state or country; provided, however, that if such corporation or association be acting as a common carrier or be operating dining, buffet, parlor or sleeping cars in this state, it may be granted a liquor tax certificate under subdivision four of section eleven of this act. And in case any car for which a liquor tax certificate is held shall be withdrawn from the service for repairs, or leave the state, such certificate may be temporarily transferred to a substitute car, in accordance with such rules and regulations as the state commissioner of excise shall prescribe, without payment of any transfer fee.

Subdivision 2, thus amended by chap. 367, Laws of 1900.

See chap. 80, Laws of 1900, not printed herein.

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#### Employment of persons addicted to intoxication by common carriers.

§ 41. Any person or officer of an association or corporation engaged in the business of conveying passengers or property for hire, who shall employ in the conduct of such business, as an engineer, fireman, conductor, switch-tender, train dispatcher, telegrapher, commander, pilot, mate, fireman or in other like capacity, so that by his neglect of duty the safety and security of life, person or property so conveyed might be imperiled, any person who habitually indulges in the intemperate use of liquors, after notice that such person has been intoxicated, while in the active service of such person, association or corporation, shall be guilty of a misdemeanor.

See Section 420, Penal Code, and section 56, Code of Criminal Procedure, section 29, Rapid Transit Act, *post*; also section 42, Railroad Law, *ante*.

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## CHAP. 376, LAWS OF 1896.

AN ACT relating to domestic commerce law, constituting chapter  
thirty-four of the general laws.

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Standard and storage of illuminating oils.

§ 24. \* \* \* \* \*

No such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit shall be burned or be carried as freight in any passenger or baggage car or passenger boat moved by steam or electric power in this state, or in any stage or street car, however propelled, except that coal oil, petroleum and its products may be carried, when securely packed in barrels or metallic packages, in passenger boats propelled by steam when there are no other public means of transportation. \* \* \* The state board of health \* \* \* shall adopt such measures to enforce the provisions of this section \* \* \* as to them may seem necessary. \* \* \* This section shall not apply to the city of New York, and shall not supersede but shall be in addition to the ordinances or regulations of any city or village made pursuant to law for the inspection or control of combustible materials therein.

\* \* \* \* \*

Unlawful detention of milk cans.

§ 29. No person shall, without the consent of the owner or shipper, or his agent, use, sell, dispose of, buy or traffic in any can, irrespective of its condition, or the use to which it may have been applied, belonging to any dealer in or shipper of milk or cream in this state, or which may be shipped to any town, village or city in the state which can has the name or initials of such owner, dealer or shipper stamped, marked or fastened thereupon, or wilfully mar, erase or change by remarking or otherwise such name or initials. If any person without the consent of such owner, dealer or shipper, or his agent, uses, sells,

disposes of, buys, traffics in, or, has in his possession or under his control any such can, it shall be presumptive evidence that such use, sale, disposal, purchase, traffic or possession, is unlawful. Any such owner, dealer or shipper, or his agent, may take possession of any can used in violation of this section wherever found, and if filled or partly filled with milk or cream, and the person in whose possession it is found does not when requested immediately empty the same, such owner, dealer or shipper, or his agent, may empty the same into the street or elsewhere, and shall not be liable for damages for any act done pursuant to the provisions of this section. Any person violating any provision of this section shall forfeit to such owner, or dealer, or shipper, or his agent, the sum of fifty dollars for every such violation, and an action may be brought therefor in the name of any such agent without joining the real party in interest that he represents, and in any such action brought for any such violation different persons may be joined as plaintiffs, whether jointly or severally interested therein, and different persons may be joined as defendants therein who have severally violated any such provisions, and a recovery may be had in favor of one or more of such plaintiffs against one or more of such defendants. Such action may be brought in a court of record having jurisdiction thereof, and the place of trial thereof may be laid in the county where such owner, dealer or shipper, resides at the time of the commencement thereof; or it may be brought in a justice's court, or other court not of record having similar jurisdiction in the city or county where a violation of this section is committed; the district courts of the city of New York shall have jurisdiction of such action irrespective of the residence of any party or the location of the subject matter. If at the time of the issue of the summons in a court not of record, the plaintiff or his agent make affidavit that he has reason to believe and does believe that any defendant has any such can or cans secreted upon his premises, the justice or other magistrate or court issuing the summons, must without requiring an undertaking grant an order for the arrest of the defendant, which order shall also contain a

direction to the officer to whom the same is issued, immediately search the place or premises mentioned in said affidavit, and if any such can, or cans are there found to bring the same together with the defendant or other persons in whose possession said can or cans are found, before such justice, magistrate or court. The proceedings may be amended at any time by adding parties or otherwise as justice may require; and the judgment may provide for the disposition of the can, or cans so found. If upon the issue of any such process, the constable, or other officer, shall be unable to find the person, or persons therein named, but shall find any can or cans, as therein set forth, he shall bring such can or cans before such justice or magistrate who shall thereupon proceed to determine the right of such complainant thereto, and if upon such hearing had thereon he shall be satisfied that such can or cans rightfully belong to such complainant, or that he is entitled to the possession thereof, he shall forthwith deliver the same into his possession or the possession of his agent. The several superintendents of the railroad companies, and the branches and connections thereof, and steamboat lines operating their roads or lines, or any portion thereof in this state shall have power to collect, gather and take into possession from any person or whenever found thereupon, any cans belonging to such owner, dealer or shipper, and return the same to such owner, dealer, or shipper and may appoint an agent for that purpose, and such superintendent and such agent appointed by him shall have the same power and authority under this section as an agent of such owner, dealer or shipper. The certificate of such superintendent appointing such agent duly acknowledged shall be presumptive evidence of the appointment and authority of such agent. Any person authorized by this section to seize and take into his possession any such cans may, in case of resistance, call to his aid any police officer or constable of the town, village or city, who shall when so called on assist him in seizing or taking possession of such cans.

Thus amended by chap. 482, Laws of 1902.

See section 56 Code of Criminal Procedure, and section 427a Penal Code, *post*. Also chapter 977, Laws of 1896, *post*.

See chap. 168, Laws of 1904, not printed herein.

**Fees and charges for elevators and warehouses.**

§ 32. The maximum charge for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in any city having a population of one hundred and thirty thousand or over, shall not exceed five-eighths of one cent a bushel. In the process of handling grain by means of floating and stationary elevators, the lake vessels or propellers, the ocean vessels or steamships and canal boats shall only be required to pay the charge of trimming or shoveling to the leg of the elevator when unloading, and trimming cargo when loading; and in any case the fee charged for the use of a shovel operated by steam or any other mechanical power, in connection with any floating or stationary elevator, shall not exceed the sum of one dollar and fifty cents for each one thousand bushels elevated. For every violation of any provision of this article, the person committing such violation shall forfeit to the people of the state the sum of two hundred and fifty dollars. A person injured by a violation of this section, may recover any damages sustained from the person violating the same.

Thus amended by chap. 366, Laws of 1903.

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**CHAP. 388, LAWS OF 1896.**

**AN ACT** to provide for a better system of lighting passenger cars on elevated railroads in cities of over twelve hundred thousand inhabitants.

**SECTION 1.** Within one year from the passage of this act every corporation operating an elevated railroad in any city of over twelve hundred thousand inhabitants in this state computed according to the last census, shall equip two-fifths of all cars used for the transportation of passengers with the most approved system of lighting passenger cars now in use upon railroads, either by electricity or gas of not less than eighteen candle power, and shall likewise equip an additional two-fifths of all such cars within two years from the passage of this act, and shall likewise equip all remaining such cars within three years

from the passage of this act, and every such corporation is hereby prohibited from using after one year from the passage of this act, kerosene or coal oils as a means of lighting more than three-fifths in number of all such cars, and after two years from the passage of this act, no more than one-fifth in number of all such cars, and after three years from the passage of this act such corporation is prohibited from using kerosene or coal oils as a means of lighting any of its passenger cars.

§ 2. Any violation of the provisions of this act shall render any such corporation liable to pay a fine or penalty of fifty dollars for each and every day, for each and every passenger car run over its railroad which is not equipped and lighted as provided in the first section of this act; and such fine may be recovered by any passenger on such railroad who may sue therefor; and any violation of the provisions of this act on the part of any such railroad corporation shall also be a misdemeanor.

#### CHAP. 649, LAWS OF 1896.

AN ACT to validate and confirm certain consents heretofore given by the local authorities of cities of the first and second class in the construction, operation and maintenance of street surface railroads therein.

SECTION 1. All consents given since December first, eighteen hundred and ninety-five, and prior to February first, eighteen hundred and ninety-six, by the local authorities of any city of the first or second class, to the construction, operation and maintenance of a street surface railroad in any such city by a railroad corporation which has not complied with the provisions of section fifty-nine of the railroad law or has failed to obtain the certificate therein provided for, are hereby validated and confirmed, and any such corporation may construct, operate and maintain a street surface railroad over, along and upon the streets, avenues, highways and public places described in such consent upon obtaining the consent of the owners of property bounded on such streets, avenues, highways or public places as provided by law.

See section 60, Railroad Law, *ante*.

## CHAP. 962, LAWS OF 1896.

AN ACT to amend section nineteen hundred and forty-eight of the code of civil procedure, by adding at the end thereof a new subdivision, relating to actions against foreign corporations.

SECTION 1. Section nineteen hundred and forty-eight of the code of civil procedure is hereby amended by adding a new subdivision thereto, as subdivision four, as follows:

4. Against a foreign corporation which exercises within the state any corporate rights, privileges or franchises, not granted to it by the law of this state; or which within the state, has violated any provision of law, or, contrary to law, has done or omitted any act, or has exercised a privilege or franchise, not conferred upon it by the law of this state, where, in a similar case, a domestic corporation would, in accordance with section seventeen hundred and ninety-eight of this act, be liable to an action to vacate its charter and to annul its existence; or which exercises within the state any corporate rights, privileges or franchises in a manner contrary to the public policy of the state.

See sections 15, *et seq.*, General Corporation Law, *ante*; section 7, Stock Corporation Law, *ante*; chap. 690, Laws 1899, *post*.

## CHAP. 977, LAWS OF 1896.

AN ACT to amend chapter four hundred and one of the laws of eighteen hundred and eighty-seven, entitled "An act in relation to milk cans," as amended by chapter twenty-five of the laws of eighteen hundred and ninety.

SECTION 1. Chapter four hundred and one of the laws of eighteen hundred and eighty-seven, entitled "An act in relation to milk cans," as amended by chapter twenty-five of the laws of eighteen hundred and ninety, is hereby amended so as to read as follows:

\* \* \* \* \*

§ 10. The owner or owners, dealer or dealers, shipper or shippers, and the several superintendents of the various railroad

companies and the branches and connections thereof, and the steamboat lines operating their lines, or any portion thereof, in the state of New York, or elsewhere, shall have power to collect, gather and take into his possession, from any person or persons within the state of New York, or wherever found in this state, any such milk or cream can or cans, and shall have power to appoint an agent therefor.

§ 11. The certificate of any superintendent of any of the railroad companies or steamboat lines mentioned in this act, or any person or persons authorized thereto, in this act, appointing an agent to collect such can or cans, duly acknowledged before a notary public, shall be presumptive evidence of the authority of such agent.

§ 12. Such agent shall have full power to collect, gather and take into his possession from any person or persons, or corporation, or wherever found, any such milk or cream can or cans, and in case of resistance may call to his aid the assistance of any constable or police officer who shall assist him to take possession of such can or cans.

§ 13. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

See section 29, chap. 376, Laws of 1896, *ante*.

NOTE.—Other provisions of this act than those printed here may apply to railroad companies.

## CHAP. 193, LAWS OF 1897.

AN ACT in relation to the consolidation of domestic and foreign railroad corporations.

SECTION 1. The consolidation heretofore effected of a domestic railroad corporation with a foreign railroad corporation, shall not be deemed invalid because such roads at the time of the consolidation did not form a connected and continuous line, if, when the consolidation was effected, an intermediate line, by purchase or by a lease, of not less than ninety-nine years became, with the consolidated roads, a continuous and connecting line of railroad, and such consolidation is hereby ratified and confirmed.

See section 70 *et seq.*, Railroad Law, *ante*; chap. 201, Laws of 1899, chap. 30, Laws 1903, *post*.

## CHAP. 286, LAWS OF 1897.

AN ACT to provide for the widening and improving of highways in towns having a total population of eight thousand or more inhabitants and containing an incorporated village having a total population of not less than eight thousand and not more than fifteen thousand inhabitants.

\* \* \* \* \*

§ 10. No surface railway shall be constructed on any said highway so widened, except within eleven feet on each side of the center line of said highway, and no such railway shall be operated by horse or horses. A distance of not less than twenty feet on each side of such twenty-two feet so reserved for railroad purposes shall be improved for highway purposes and not less than sixteen feet of said twenty feet shall be of macadam. Sidewalks shall be graded on each side of said highway to a width of not less than fifteen feet each.

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CHAP. 378, LAWS OF 1897—GREATER NEW YORK  
CHARTER.

§ 17. The legislative power of The City of New York, except as otherwise herein provided, shall be vested in one house to be known and styled as "the board of aldermen of The City of New York."

Thus amended by chap. 629, Laws of 1905.

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§ 28. The board of aldermen shall, whenever a vacancy occurs in the office of the city clerk, appoint a clerk, who shall perform such duties as may be prescribed for him. The clerk so appointed shall also be the city clerk and the clerk of the board of aldermen, and shall hold his office for six years, and until his successor shall be appointed and has qualified, unless removed for cause. The city clerk shall have charge of all the papers and documents of the city, except such as are by law committed to the keeping of the several departments or of other officers, and except as provided in section one hundred and thirty-six



of this act as amended. He shall keep the record of the proceedings of the board of aldermen. He shall also keep a separate record of all the ordinances of the board of aldermen in a book to be provided for that purpose, with proper indices, which book shall be deemed a public record of such ordinances, and each ordinance shall be attested by said clerk. He shall also keep a separate and public record which shall be known as the "street franchise book". In such record he shall forthwith transcribe verbatim from copies duly certified by or under the authority of the board granting, making or adopting the same, every grant, franchise, contract or resolution in the nature of a franchise affecting any of the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, wharves, bulkheads, piers or public grounds or waters within or belonging to the city which shall hereafter be granted, made or adopted by the board of estimate and apportionment or the board of rapid transit railroad commissioners of the city, together with copies of all formalities of the execution or verification thereof, and shall forthwith, after so transcribing the same, make and transmit to the board which shall have made, granted or adopted such grant, franchise, contract or resolution a copy of such record, with a minute of the date, volume and page thereof, duly certified by him. Copies of all papers duly filed in his office, and transcripts thereof, and of the records of proceedings of the board of aldermen, and copies of the laws and ordinances of said city, certified by him under the corporate seal, shall be admissible in evidence in all courts and places in the same manner and for the same purposes as papers or documents similarly authenticated by the clerk of a county. Said city clerk may be removed on charges by a two-thirds vote of all the members of the board of aldermen, subject, however, to judicial review on certiorari. He shall collect the following fees: For a copy of any book, account, record or other paper filed in his office, five cents for each folio; for a certification of any book, account, record or other paper filed in his office, twenty-five cents, and five cents in addition

for each folio in excess of five; for each bond filed in his office, twelve cents; for filing all other papers, required by law to be filed in his office, six cents; for a certificate of appointment of a commissioner of deeds, twenty-five cents.

Thus amended by chap. 629, Laws of 1905.

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§ 41. The ordinances which on December thirty-first, eighteen hundred and ninety-seven, were in force respectively in The City of New York, the city of Brooklyn, Long Island City, and the other municipal and public corporations and parts thereof consolidated with The City of New York, except so far as the same have since been modified, amended, or repealed by the municipal assembly of The City of New York, and all ordinances which on January first, nineteen hundred and two, are in force in The City of New York, are, so far as the same are not inconsistent with this act, hereby continued in full force and effect within the former limits of said respective cities and municipal and public corporations, or parts thereof, subject to modification, amendment or repeal by the board of aldermen of The City of New York. Such ordinances may be enforced by and in the name of "The City of New York". But all such ordinances affecting or relating to grants, franchises or contracts, or resolutions in the nature of, a franchise heretofore made, granted or adopted, or to be hereafter made, granted or adopted, or rights now or hereafter existing, involving the occupation or use of any street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, wharf, bulkhead, pier or public grounds or waters which are within or belong to the city, shall hereafter be subject to modification, amendment or repeal by the board of estimate and apportionment in like manner in which and within the same limits within which they have heretofore been subject to modification, amendment or repeal by the said board of aldermen, Provided, however, that this section shall not apply to or affect any franchise, grant, contract or right authorized by the board of rapid transit railroad commissioners of the city.

Thus amended by chap. 629, Laws of 1905.

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§ 43. The board of aldermen shall have power to make, establish, alter, modify, amend and repeal all ordinances, rules, and police, health, park, fire and building regulations, not contrary to the laws of the state, or the United States, as they may deem necessary to carry into effect the powers conferred upon The City of New York by this act, or by any other law of the state, or by grant; and such as they may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, peace and prosperity of said city, and its inhabitants, except so far as power is conferred by this act upon presidents of boroughs, the police, health, park and fire departments respectively to make rules for the government of the persons employed in and by said departments. Nothing in this section contained shall be construed to impair the powers conferred by this act upon the department of education; and except so far as the legislative power respecting the health, police, park, fire and building departments shall be conferred upon said departments respectively by the provisions of this act, and except that any modification of the existing rules, regulations and ordinances affecting any of the departments and all ordinances to be passed to govern the board of public improvements or any of the departments thereof, must originate with the department concerned, or with said board, and must be adopted or rejected by the board of aldermen without amendment. But nothing in this section or this act contained shall be construed to impair the power or control conferred by this act upon the board of estimate and apportionment with respect to the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all public grounds and waters which are within or belong to the city.

Thus amended by chap. 629, Laws of 1905.

§ 44. No enumeration of powers in this act shall be held to limit the legislative power of the board of aldermen except as in this act specifically provided and the board of aldermen in addition to all enumerated powers may exercise all of the powers

vested in The City of New York by this act, or otherwise, by proper ordinances, rules, regulations and by-laws not inconsistent with the provisions of this act, or with the constitution or laws of the United States or of this state; and, subject to such limitations, may from time to time ordain and pass all such ordinances, rules, regulations and by-laws, applicable throughout the whole of said city or applicable only to specified portions thereof, as to the said board of aldermen may seem meet for the good rule and government of the city, and to carry out the purposes and provisions of this act or of other laws relating to the said city, and may provide for the enforcement of the same by such fines, penalties, forfeitures and imprisonment as may by ordinance or by law be prescribed.

Thus amended by chap. 629, Laws of 1905.

§ 45. Nothing in this act contained shall repeal or affect in any manner the provisions of the rapid transit acts applicable to the corporation heretofore known as the mayor, aldermen and commonalty of The City of New York, or any municipality united therewith or territory embraced therein, or to repeal or affect the existing general laws of the state in respect to street surface railroads. The consent or approval of the board of aldermen to or for the issue of corporate stock of The City of New York, as provided by section one hundred and sixty-nine shall not be necessary to authorize the comptroller to issue such stock for the purposes prescribed in chapter four of the laws of eighteen hundred and ninety-one as amended. The board of estimate and apportionment and the comptroller of The City of New York shall, anything herein contained to the contrary notwithstanding, be subject to all the duties and obligations prescribed in said chapter four of the laws of eighteen hundred and ninety-one as amended for the board of estimate and apportionment and comptroller therein mentioned. Upon the execution of any contract made pursuant to chapter four of the laws of eighteen hundred and ninety-one as amended, the board of rapid transit railroad commissioners may, in its discretion, make request upon the board of estimate and apportion-

ment for the authorization of such corporate stock, either for such amounts from time to time as they shall deem the progress of the work to require, or for the full amount sufficient to pay the entire estimated expense of executing such contract. In case they shall make requisition for the entire amount, the comptroller shall endorse on the contract his certificate that funds are available for the entire contract whenever such stock shall have been authorized to be issued by said board of estimate and apportionment; and in such case such stock may be issued from time to time thereafter in such amounts as may be necessary to meet the requirements of such contract. The certificate of the comptroller, mentioned in section one hundred and forty-nine of this act, shall not be necessary to make such contract binding on The City of New York.

Thus amended by chap. 629, Laws of 1905.

See Rapid Transit Act, *post*.

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§ 47. The board of aldermen shall have power to provide by ordinance for the acquisition, construction, or establishment of markets; for the acquisition and construction of parks, parkways, playgrounds, boulevards and driveways; for the building of bridges over, and of tunnels under any stream or waterway within or adjoining the limits of the city; for the building of docks, wharves, or piers, and for acquiring land by purchase or condemnation, for said purposes; for acquiring, constructing, improving, permanently bettering and equipping public buildings, including school houses and sites therefor for the use of the city; for the repaving of streets; for building, repairing and equipping boats and vessels or other floating craft of any kind that may be needed for the use and purposes of the city; for the establishing, building and equipping of telegraph or other systems of communication for the use and purposes of the police department and other departments of the city government; for the construction and equipment of public comfort stations; for the making and completing of maps of all the territory embraced within each of the boroughs of said city; and for any of the foregoing purposes, may create loans and authorize the issue of

bonds, or other evidences of indebtedness, to pay for the same, payable at such times, and in such manner, and at such rates of interest as it may by ordinance prescribe; but no bonds or other evidences of indebtedness shall be issued under the authority of this section, unless the proposition for creating such debt, shall first be approved by a majority vote of the whole board of estimate and apportionment, entered on the minutes of record of such board. In addition to the specific purposes hereinbefore set forth, the board of aldermen may also create loans and authorize the issue of bonds for any other purpose connected with the exercise of the various powers conferred by this act upon The City of New York or any department or official thereof; provided, however, that no bonds or other evidences of indebtedness shall be issued for such additional purposes unless first approved by a unanimous vote of the board of estimate and apportionment, entered upon the minutes of record of said board; Provided, however, that all the powers in this section or elsewhere in this act granted to the board of aldermen shall be subject to the control of the board of estimate and apportionment over all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all public grounds and waters which are within or belong to the city as provided in this act.

Thus amended by chap. 629, Laws of 1905.

§ 48. After any proposition for creating a debt by the issue of bonds for any of the purposes specified in section forty-seven of this act as amended, has been approved by a resolution or vote of the board of estimate and apportionment, it shall be the duty of the board of aldermen upon receiving a copy of such resolution or vote to appoint a day not less than one week nor more than two weeks after receipt thereof for the consideration of the subject-matter. The board of aldermen shall, on the day so fixed, proceed with the consideration thereof, and may continue and adjourn such consideration from time to time until a final vote shall be taken thereon as hereinafter provided. Within six weeks after the copy of such resolution or vote of the board of esti-

mate and apportionment shall have been first received by the board of aldermen, a final vote shall be taken thereon by ayes and noes.

If a majority of all the members of the board of aldermen shall vote against such proposition it shall be deemed to be rejected. If a majority of all the members of the board of aldermen shall not vote against such proposition within the six weeks above limited, then it shall be deemed at the expiration of said period to have been passed by the requisite vote of the board of aldermen. The action of the board of aldermen in passing any such proposition whether by an affirmative vote, or by a failure of a majority of all the members of the board of aldermen to vote against the same, shall be subject to the approval of the mayor and to the action of the board of aldermen in case of a veto, as provided in this act.

Thus amended by chap. 629, Laws of 1905.

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§ 50. Subject to the constitution and laws of the state, the board of aldermen shall have power to regulate the use of streets and sidewalks by foot passengers, animals or vehicles; to regulate the speed at which vehicles shall be driven or ridden and at which vehicles shall be propelled in the streets; to regulate processions or parades occupying or marching upon any street; to prevent encroachments upon and obstructions to the streets and to authorize and require their removal by the proper officers; to regulate the opening of street surfaces for purposes authorized by law; to regulate the numbering of houses and lots in the streets and the naming of streets, except that it shall not be lawful to number or renumber any houses or to change the name of any street save between the first day of December in any year and the first day of May next ensuing; to regulate and prevent the throwing or depositing of ashes, garbage or other filth or rubbish of any kind upon the streets; to regulate the use of the streets for signs, signposts, awnings, awning posts, horsetroughs, urinals, posts for telegraph or other electric wires, and other purposes; to regulate street pavements, crosswalks, curbstones,

gutter-stones and sidewalks; to provide for regulating, grading, flagging, curbing, guttering and lighting the streets; to regulate public cries, advertising noises, steam whistles, and ringing bells in the streets; to regulate the exhibiting of banners, placards or flags in or across the streets or from houses or other buildings; to regulate the exhibition of advertisements or handbills along the streets; and to make all such regulations in reference to the running of stages, omnibuses, trucks and cars as may be necessary for the convenient use and the accommodation of the streets, piers, wharves or stations. Whenever the word "street" or the plural thereof occurs in this section it shall be deemed to include all that is included by the terms "street, avenue, road, alley, lane, highway, boulevard, concourse, public square and public place", or the plurals thereof respectively. Wherever the word "vehicle" or the plural thereof occurs in this section it shall be deemed to include wagons, trucks, carts, cabs, carriages, stages, omnibuses, motors, automobiles, locomobiles, locomotives, bicycles, tricycles, sleighs or other conveyances for persons or property. The board of aldermen shall not have power to authorize the placing or continuing of any encroachment or obstruction upon any street or sidewalk, except the temporary occupation thereof during the erection or repairing of a building on a lot opposite the same, nor shall they permit the erection of booths and stands within stoop lines, except for the sale of newspapers, periodicals, fruits and sodawater, and with the consent in such cases of the owner of the premises. The board of aldermen shall not pass any special ordinance in relation to any of the matters mentioned in this section. All ordinances in relation thereto shall be general ordinances which may either apply throughout the whole city or throughout specified portions thereof, and shall provide for the enforcement thereof as specified in section forty-four of this act as amended. Nothing herein contained shall be construed to prevent the board of aldermen from providing by special ordinance for the erection or maintenance on the streets or waters within The City of New York of fountains, public comfort stations, urinals, public baths, or other like structures maintained by the public



authorities; for the establishment of which the said board is hereby empowered to provide. All general ordinances relating to authorized structures, encroachments or obstructions in or upon the streets or sidewalks by persons other than the authorities of The City of New York, or other public authorities, shall fix a definite license fee for every such authorized structure, encroachment or obstruction, according to the character, extent and duration thereof, and shall provide for the issuing of revocable licenses therefor, which shall be according to an established form and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen. But no ordinance hereafter adopted or power hereafter exercised by the board of aldermen shall limit, apply to or affect any franchise, grant, contract or resolution in the nature of a franchise hereafter made, approved or authorized by the board of estimate and apportionment as in this act provided, or by the board of rapid transit railroad commissioners of The City of New York.

Thus amended by chap. 629, Laws of 1905.

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#### **Inalienable rights of the city to its properties.**

§ 71. The rights of the city in and to its water front, ferries, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places are hereby declared to be inalienable.

Re-enacted by chap. 466, Laws of 1901.

§ 72. Every grant of or relating to a franchise of any character to any person or corporation must, unless otherwise provided in this act, be by ordinance of the board of aldermen or by resolution of the board of estimate and apportionment or a contract executed by or under the authority of the said board of estimate and apportionment, provided that every such ordinance, resolution or contract shall be subject to the provisions of this act with respect to approval by the mayor. But this section shall not apply to any franchise, right or contract authorized by the board of rapid transit railroad commissioners of The City of New York.

Thus amended by chap. 629, Laws of 1905.

§ 73. After the approval of this act no franchise or right to use the streets, avenues, waters, rivers, parkways or highways of the city shall be granted by any board or officer of The City of New York under the authority of this act to any person or corporation for a longer period than twenty-five years, except as herein provided, but such grant may, at the option of the city, provide for giving to the grantee the right on a fair revaluation or revaluations to renewals not exceeding in the aggregate twenty-five years. Nothing in the foregoing provisions of this section contained shall apply to consents granted to tunnel railroad corporations, nor shall anything in this section or in this title contained apply to grants made pursuant to the rapid transit act, chapter four of the laws of eighteen hundred and ninety-one or the acts amendatory thereof. The board of estimate and apportionment is hereby authorized, in its discretion to grant a franchise or right to any railroad corporation to use any of said streets, avenues, waters, rivers, parkways or highways in The City of New York for the construction and operation of a tunnel railroad underneath the surface thereof for any period not exceeding fifty years, and any such grant may at the option of the city provide for giving to the grantee the right, on a fair revaluation or revaluations, to renewals not exceeding in the aggregate twenty-five years, provided, however, that any grant to construct a tunnel railroad or renewal thereof, shall only be made after an agreement has been entered into by such a tunnel corporation to pay to The City of New York at least three per centum, of the net profits derived from the use of any tunnel which it shall construct, after there shall have first been retained by such company from such net profits a sum equal to five per centum upon the sum expended to construct such tunnel. At the termination of any franchise or right granted by the board of estimate and apportionment all the rights or property of the grantee in the streets, avenues, waters, rivers, parkways and highways shall cease without compensation. Every such grant of a franchise and every contract made by the city in pursuance thereof may pro-

vide that upon the termination of the franchise or right granted by the board of estimate and apportionment the plant of the grantee with its appurtenances, shall thereupon be and become the property of the city without further or other compensation to the grantee; or such grant and contract may provide that upon such termination there shall be a fair valuation of the plant which shall be and become the property of the city on the termination of the contract on paying the grantee such valuation. If by virtue of the grant or contract the plant is to become the city's without money payment therefor, the city shall have the option either to take and operate the said property on its own account, or to lease the same for a term not exceeding twenty years. If the original grant shall provide that the city shall make payment for the plant and property, such payment shall be at a fair valuation of the same as property, excluding any value derived from the franchise; and if the city shall make payment for such plant it shall in that event have the option either to operate the plant and property on its own account or to lease the said plant and property and the right to the use of streets and public places in connection therewith for limited periods, in the same or similar manner as it leases the ferries and docks. Every grant shall make adequate provision by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates and the maintenance of the property in good condition throughout the full term of the grant. The grant or contract shall also specify the mode of determining the valuation and revaluations therein provided for.

Thus amended by chap. 629, Laws of 1905.

§ 74. Before any grant of the franchise or right to use any street, avenue, waterway, parkway, park, bridge, dock, wharf highway or public ground or water within or belonging to, the city shall be made by the board of estimate and apportionment, the proposed specific grant embodied in the form of a contract with all of the terms and conditions, including the provisions as to rates, fares and charges, and together with the form of the

resolution or resolutions for the granting of the same, shall be entered in the minutes of the board of estimate and apportionment and after such entry shall be published at least twenty days in the City Record and at least twice in two daily newspapers published in the city to be designated by the mayor at the expense of the proposed grantee. The board of estimate and apportionment shall, before authorizing any such contract or adopting any such resolution, set a date or dates for a public hearing thereon at which citizens shall be entitled to appear and be heard. No such hearing shall be held however until notice thereof shall have been published for at least ten days immediately prior thereto in the City Record and at least twice in two daily newspapers published in the city to be designated by the mayor, at the expense of the proposed grantee, and the said board of estimate and apportionment before authorizing any such contract or adopting any such resolution shall make inquiry as to the money value of the franchise or right proposed to be granted and the adequacy of the compensation proposed to be paid therefor, and publish the results of such inquiry at least ten days in the City Record and at least twice in the daily newspapers in which such form of contract shall be published. Every such contract or resolution shall be entered on the minutes or record of such board of estimate and apportionment, and every contract or resolution containing or making such grant shall require the concurrence of members of the board of estimate and apportionment entitled as provided by law to three-fourths of the total number of votes to which all the members of the said board shall be entitled, and the votes shall be shown by the ayes and noes as recorded in the minutes of the board. Thirty days at least shall intervene between the introduction and final passage of any such resolution or authorization of such contract. The separate and additional approval of the mayor shall be necessary to the validity of every such contract or resolution. This act shall apply to any renewal or extension of the grant or leasing of the property to the same grantee or to others. Within five days after the adoption of

any such resolution or any such authorization, a copy thereof, including the full text of the franchise, grant or contract, and duly attested by the clerk of the board of estimate and apportionment, shall be transmitted to each of the following: The comptroller, the corporation counsel, the city clerk and the board of rapid transit railroad commissioners of The City of New York, to be preserved by them among the archives of their departments or office. All such certified copies shall be deemed to be public records.

Thus amended by chap. 630, Laws of 1905, which provides that "All acts or parts of acts inconsistent with this act are hereby repealed." See chap. 629, Laws of 1905, amending this section.

§ 75. The board of aldermen may, from time to time, with respect to any grant which that board shall, under the authority of this act, have the exclusive power to make, pass appropriate ordinances, not inconsistent with the constitution and laws of the state, to carry the provisions of this title into effect, but shall not part with the right and duty at all times to exercise in the interest of the public, full municipal superintendence, regulation and control in respect of all matters connected with such grant, and not inconsistent with the terms thereof.

Thus amended by chap. 629, Laws of 1905.

#### City may dispose of buildings not required for public use.

§ 76. Nothing in this title contained shall prevent the city from disposing of any building or parcel of land no longer needed for public use, provided such disposition shall be approved by the sinking fund commissioners, and shall be at public sale, and be provided for by ordinance.

Re-enacted by chap. 466, Laws of 1901.

#### Acts not applicable to grants under this title.

§ 77. Section ninety-three of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety and any acts amendatory thereof or supplemental thereto, shall have no application to grants made under and pursuant to this title.

Thus amended by chap. 466, Laws of 1901.

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§ 242. The board of estimate and apportionment shall have power over the following subjects:

(1) To appropriate, from time to time, for the maintenance, improvement and extension of the system of water supply of the borough of Brooklyn, the moneys received from water rents in the said borough, subject, however, to the charges now imposed by law upon said revenues.

(2) To appropriate, from time to time, for the maintenance of the New York and Brooklyn bridge the moneys received from the revenues of said bridge.

The board of estimate and apportionment shall have also (3) the control of all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all other public grounds and waters within or belonging to the city; except as in this act otherwise provided. The powers by this act granted to the board of aldermen with respect to the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, docks, waterways, bulkheads, wharves, piers and public grounds and waters which are within or belong to the city shall be subject to such control of the board of estimate and apportionment. If and when the board of estimate and apportionment shall deem it proper in the case of any application or matter affecting any street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, wharf, pier or public ground or water within or belonging to the city, whether the board of aldermen or any other department or officer shall have acted or omitted to act, the board of estimate and apportionment may itself originally act or may, by amendment, revision or repeal of any resolution, ordinance, grant or other action adopted or had by the board of aldermen or any other department or officer, exercise its said power of control; and if and when the board of estimate and apportionment shall so act or exercise such control, such action or control shall be fully and finally operative, notwithstanding any resolution, ordinance, grant or other action adopted or had by the board of alder-

men or any other department or officer of the city or any omission to act on the part of the board of aldermen or other department or officer. The board of estimate and apportionment shall hereafter, except in the cases where franchises, rights or contracts shall be granted or authorized pursuant to the rapid transit act, chapter four of the laws of eighteen hundred and ninety-one, and the amendments thereof, have the exclusive power in behalf of the city to grant to persons or corporations franchises or rights or make contracts providing for or involving the occupation or use of any of the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers or public grounds or waters within or belonging to the city, whether on, under or over the surface thereof, for railroads, pipe or other conduits or ways or otherwise for the transportation of persons or property or the transmission of gas, electricity, steam, light, heat or power, provided, however, that no such exercise of power by the board of estimate and apportionment shall be operative until the same shall be in writing approved by the mayor separately from and after the action of the board of estimate and apportionment; and provided, further, that this section shall not prevent the exercise by the board of aldermen of the powers expressly granted it by sections forty-nine, fifty, fifty-one and fifty-two of this act; but such exercise of powers by the board of aldermen shall in every case be subject to the control by this act granted to the board of estimate and apportionment over all the streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and all public grounds and waters which are within or belong to the city. If and when the board of rapid transit railroad commissioners for The City of New York shall, under any of the provisions of chapter four of the laws of eighteen hundred and ninety-one, or of any of the acts amending the same, conclude or determine upon the construction of any rapid transit railway or railways or adopt any route or routes, plans or specifications therefor, or if and when the said board of rapid transit

railroad commissioners shall grant any right or rights, franchise or franchises or enter into any contract or contracts under any of the provisions of the said chapter four of the said laws of eighteen hundred and ninety-one or any of the said amendments thereof, the said board shall transmit to the board of estimate and apportionment a copy of any and every such determination or conclusion, grant or contract, and in case any such determination, conclusion, route, plan, specification, right, franchise, or contract, shall require or involve the use of any street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier or any public ground or water which is within or belongs to the city, the said board of estimate and apportionment shall within sixty days after the receipt by it of such copy of such determination, conclusion, grant or contract determine whether or not it will, as the local authority having the control of such street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, dock, waterway, bulkhead, wharf, pier or other public ground or water which is within or belongs to the city, consent or refuse to consent to such route, determination, conclusion, plan, specification, right, franchise or contract, and shall within such sixty days transmit in writing to the said board of rapid transit railroad commissioners its said determination whether of consent or refusal. Provided, however, that the said board of estimate and apportionment and the said board of rapid transit railroad commissioners may by resolution adopted by each of them extend such period of sixty days. Hereafter no consent or approval of any such determination, conclusion, route, plan, specification, right, franchise or contract by the board of aldermen or any department or officer of the city shall be necessary.

Thus amended by chap. 629, Laws of 1905; section 15 of said chapter is as follows:

(Chapter 629, Laws of 1905.) § 15. This act and all the amendments hereby made to the sections thereof hereby amended shall be applicable to every grant, franchise or contract heretofore made, authorized or issued by the said board of rapid transit railroad commissioners, but not yet consented to by the common council or board of aldermen of the city, as well as to all grants, franchises or contracts hereafter made, authorized or issued by the said board of rapid transit railroad commissioners.

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**Stages and omnibuses; consents of property owners necessary before franchise granted.**

§ 1458. No stage or omnibus route, or authority to run stages or omnibuses in The City of New York, shall hereafter be granted by the board of aldermen, unless a majority of the owners of property upon the streets, in or upon which any such route or privilege is to be operated, shall before the board of aldermen act on the subject, first consent in writing thereto.

Thus amended by chap. 466, Laws of 1901.

**Application to mayor, etc.; before route established.**

§ 1459. Before any route for the running of omnibuses or stages shall be established or allowed to be operated in said city, except as provided in this act, the application therefor shall be made in writing to the mayor of said city, specifying the route proposed to be established and the number of stages or omnibuses proposed to be run thereon; and unless the said mayor shall communicate such application to the board of aldermen with his approval thereof, and said board of aldermen after receiving such communication and approval shall vote in favor thereof by a three-fourths vote of all the members, no such route shall be established or operated; and upon such favorable action such route may be established and operated accordingly and the ownership thereof may be transferred.

Thus amended by chap. 466, Laws of 1901.

**Stage route to be disposed of like other franchises.**

§ 1460. Any stage route or privilege hereafter granted by the board of aldermen shall be disposed of in the manner provided by law for the disposition of the franchises of said city.

Thus amended by chap. 466, Laws of 1901.

**Not to be run except in conformity with preceding sections or as hereinafter provided.**

§ 1461. It shall not be lawful to run stages or omnibuses in The City of New York, as constituted by this act, except in conformity with the preceding sections, and no stage route shall

after April first, nineteen hundred and one, be established or operated upon that portion of any street, avenue, road or highway in which a street surface railway or stage route is or shall be lawfully established, and in operation for a distance greater than one thousand feet, without first obtaining the consent of the corporation owning such railway or stage route, but nothing in this act shall be construed to affect the right possessed by any company to operate stage routes or extensions then established and in lawful operation, nor to affect any authority conferred upon any such company to acquire rights and privileges under chapter six hundred and fifty-seven of the laws of nineteen hundred, nor to affect any acts heretofore done thereunder.

Thus amended by chap. 466, Laws of 1901.

See section 163 Highway Law, section 23 Transportation Corporations Law, *ante*; chap. 538, Laws 1904, section 666 Penal Code, *post*.

See section 49 as to licensing of street cars, etc.; section 315 as to police at railroad stations; section 749 as to hose bridges over railway tracks during fires; subdivision 7, section 1069 as amended by chap. 542, Laws of 1904, as to contracts for transportation of school children; section 1456, until changed by board of aldermen, allows salt or saltpetre to be used upon curves, crossings or switches of railroad tracks for the purpose of dissolving snow or ice. See also other provisions of the act which apply to railroads.

#### CHAP. 411, LAWS OF 1897.

AN ACT to amend the executive law, relating to the fees to be paid for filing certain certificates of incorporation.

SECTION 1. Subdivision twelve of section twenty-six of chapter six hundred and eighty-three of the laws of eighteen hundred and ninety-two, entitled "An act in relation to executive officers, constituting chapter nine of the general laws," is hereby amended to read as follows:

12. For filing and recording the original certificate of incorporation of a railroad corporation for the construction of a railroad in a foreign country, fifty dollars; for filing the original certificates of every other railroad corporation, twenty-five dollars; for filing the original certificate of any other stock corporation, ten dollars; for filing any original certificate of incorporation drawn under article two of the membership corporations law ten dollars.

## CHAP. 414, LAWS OF 1897.

AN ACT in relation to villages, constituting chapter twenty-one  
of the general laws.

## Short title.

SECTION 1. This chapter shall be known as the village law.

\* \* \* \* \*

## Village ordinances.

§ 89. The board of trustees has power to enact, amend and  
repeal ordinances for the following purposes:

\* \* \* \* \*

## Blowing of steam.

7. To regulate or prevent the blowing of steam into, upon or  
over the streets.

\* \* \* \* \*

## Poles and wires.

9. To regulate the erection of telegraph, telephone or electric  
light poles, or the stringing of wires in, over or upon the streets  
or public grounds, or upon, over or in front of any building or  
buildings.

## Railroad crossings; speed.

10. To regulate the time during which cars, engines or trains  
may stand upon the street crossings of railroads; to regulate  
the speed of locomotives and cars, subject to the provisions of  
the railroad law, and by a two-thirds vote of all the members of  
the board, to require railroad companies to erect gates at cross-  
ings, to employ competent men to attend the same, and to employ  
competent flagmen at such crossings.

\* \* \* \* \*

## Improper noises.

18. To regulate or prevent the ringing of bells, blowing of  
horns and steam whistles, and the making of other improper  
noises in the village.

\* \* \* \* \*

**Collection of taxes by collector.**

§ 115. Upon receiving the assessment-roll and warrant the collector shall cause a notice to be published at least once in the official paper, if any, and also in each other newspaper published in the village, and posted conspicuously in five public places in the village, stating that on six days specified therein, not less than nine nor more than twenty days after the publication and posting thereof, he will attend at a convenient place in the village, specified in the notice, for the purpose of receiving taxes. At least seven days before the first date fixed in such notice, the collector shall serve a copy thereof upon each corporation named in or subject to taxation upon the assessment-roll, and whose principal office is not in the village, by delivering such copy to a person designated by the corporation for that purpose by a written designation filed with the village clerk, or to any person in the village acting as the agent or representative in any capacity of such corporation. If there is no such designated person or agent in the village, service of such notice upon the corporation shall not be required. Any person or corporation paying taxes within twenty days from the date of the notice, shall be charged with one per centum thereon, and thereafter with five per centum, for the fees of the collector. If a notice is not served upon a corporation as herein required, the collector shall only be entitled to one per centum as his fees upon the taxes assessed against it. After the expiration of such twenty days the collector shall proceed to collect the taxes remaining unpaid, and for that purpose he possesses all the powers of a town collector. The laws relating to town collectors shall also, so far as consistent with this chapter, apply to the collection of village taxes.

\* \* \* \* \*

**Effect of determination.**

§ 148. The determination by the board has the following effect:

1. If the petition for the laying out, alteration or widening of a street be granted, the board of trustees may acquire the land

for such improvement by purchase or by proceedings under this article. But no street shall be laid out through a building or any fixtures or erections for the purposes of trade or manufacture, or any yard or enclosure necessary to be used for the enjoyment thereof, without the consent of the owner, except upon the order of a justice of the supreme court residing in the judicial district in which the village or a part thereof is situated, to be granted upon an application by the board of trustees on a notice to the owner of not less than ten days.

\* \* \* \* \*

# CHAP. 415, LAWS OF 1897.

AN ACT in relation to labor, constituting chapter thirty-two of the general laws.

## Short title. ARTICLE 1.

SECTION 1. This chapter shall be known as the labor law.

## Definitions.

§ 2. The term employee, when used in this chapter, means a mechanic, workingman or laborer who works for another for hire.

The person, employing any such mechanic, workingman or laborer, whether the owner, proprietor, agent, superintendent, foreman or other subordinate, is designated in this chapter as an employer. \* \* Whenever, in this chapter, authority is conferred upon the commissioner of labor, it shall also be deemed to include his assistant or a deputy acting under his direction.

Thus amended by chap. 550, Laws of 1904.

\* \* \* \* \*

## Hours of labor on street surface and elevated railroads.

§ 5. Ten consecutive hours' labor, including one-half hour for dinner shall constitute a day's labor in the operation of all street surface and elevated railroads, of whatever motive power, owned or operated by corporations in this state, whose main line of travel or whose routes lie principally within the corporate

limits of cities of more than one hundred thousand inhabitants. No employe of any such corporation shall be permitted or allowed to work more than ten consecutive hours, including one-half hour for dinner, in any one day of twenty-four hours.

In cases of accident or unavoidable delay, extra labor may be performed for extra compensation.

\* \* \* \* \*

### **Regulation of hours of labor on steam surface and elevated railroads.**

§ 7. Ten hours labor, performed within twelve consecutive hours, shall constitute a legal day's labor in the operation of steam surface and elevated railroads owned and operated within this state, except where the mileage system of running trains is in operation. But this section does not apply to the performance of extra hours of labor by conductors, engineers, firemen and trainmen in case of accident or delay resulting therefrom. For each hour of labor performed in any one day in excess of such ten hours, by any such employe, he shall be paid in addition at least one-tenth of his daily compensation.

No person or corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this state, shall permit or require a conductor, engineer, fireman or trainman, who has worked in any capacity for twenty-four consecutive hours, to go again on duty or perform any kind of work, until he has had at least eight hours' rest.

See chap. 711, Laws of 1892, *ante*.

### **Payment of wages by receivers.**

§ 8. Upon the appointment of a receiver of a partnership or of a corporation organized under the laws of this state and doing business therein, other than a moneyed corporation, the wages of the employes of such partnership or corporation shall be preferred to every other debt or claim.

See section 5, Stock Corporation Law, section 30, Railroad Law, *ante*, and statutes cited.

**Cash payment of wages.**

§ 9. Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, and every water company, not municipal, shall pay to each employe engaged in its business the wages earned by him in cash. No such company or corporation shall pay its employes in scrip, commonly known as store money orders.

**When wages are to be paid.**

§ 10. Every corporation or joint stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employe the wages earned by him to a day not more than six days prior to the date of such payment.

But every person or corporation operating a steam surface railroad shall, on or before the twentieth day of each month, pay the employes thereof the wages earned by them during the preceding calendar month.

**Penalty for violation of preceding sections.**

§ 11. If a corporation or joint stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an employe as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action; but an action shall not be maintained therefor, unless the factory inspector shall have given to the employer at least ten days' written notice, that such an action will be brought if the wages due are not sooner paid as provided in this article.

On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employe from his regular place of labor at the time of payment, or an actual tender to such employe at the

time of the payment of the wages so earned by him, or a breach of contract by such employe or a denial of the employment.

### Assignment of future wages.

§ 12. No assignment of future wages, payable weekly, or monthly in case of a steam surface railroad corporation, shall be valid if made to the corporation or association from which such wages are to become due, or to any person on its behalf, or if made or procured to be made to any person for the purpose of relieving such corporation or association from the obligation to pay weekly, or monthly in case of a steam surface railroad corporation. Charges for groceries, provisions or clothing shall not be a valid off-set for wages in behalf of any such corporation or association.

No such corporation or association shall require any agreement from any employe to accept wages at other periods than as provided in this article as a condition of employment.

\* \* \* \* \*

## ARTICLE X.

### STATE BOARD OF MEDIATION AND ARBITRATION.

#### SECTION 140.\*

#### 141.\*

142. Arbitration by the board.

143. Mediation in case of strike or lock-out.

144. Decisions of board.

145. Annual report.

146. Submission of controversies to local arbitrators.

147. Consent; oath; powers of arbitrators.

148. Decision of arbitrators.

149. Appeals.

### Arbitration by the board.

§ 142. A grievance or dispute between an employer and his employes may be submitted to the board of arbitration and mediation for their determination and settlement. Such submission shall be in writing, and contain a statement in detail of the grievance or dispute and the cause thereof, and also an agree-

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\*Repealed by implication, see chap. 9, Laws of 1901, *post*.



ment to abide the determination of the board, and during the investigation to continue in business or at work, without a lock-out or strike.

Upon such submission, the board shall examine the matter in controversy. For the purpose of such inquiry they may subpoena witnesses, compel their attendance and take and hear testimony. Witnesses shall be allowed the same fees as in courts of record. The decision of the board must be rendered within ten days after the completion of the investigation.

#### **Mediation in case of strike or lock-out.**

§ 143. Whenever a strike or lock-out occurs or is seriously threatened, the board shall proceed as soon as practicable to the locality thereof, and endeavor by mediation to effect an amicable settlement of the controversy. It may inquire into the cause thereof, and for that purpose has the same power as in the case of a controversy submitted to it for arbitration.

#### **Decisions of board.**

§ 144. Within ten days after the completion of every examination or investigation authorized by this article, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the points disposed of by them, and make a written report of their findings of fact and of their recommendations to each party to the controversy.

Every decision and report shall be filed in the office of the board and a copy thereof served upon each party to the controversy, and in case of a submission to arbitration, a copy shall be filed in the office of the clerk of the county or counties where the controversy arose.

#### **Annual report.**

§ 145. The board shall make an annual report to the legislature, and shall include therein such statements and explanations as will disclose the actual work of the board, the facts relating

to each controversy considered by them and the decision thereon together with such suggestions as to legislation as may seem to them conducive to harmony in the relations of employers and employees.

**Submission of controversies to local arbitrators.**

§ 146. A grievance or dispute between an employer and his employees may be submitted to a board of arbitrators, consisting of three persons, for hearing and settlement. When the employees concerned are members in good standing of a labor organization, which is represented by one or more delegates in a central body, one arbitrator may be appointed by such central body and one by the employer. The two so designated shall appoint a third, who shall be chairman of the board.

If the employees concerned in such grievance or dispute are members of good standing of a labor organization which is not represented in a central body, the organization of which they are members may select and designate one arbitrator. If such employees are not members of a labor organization, a majority thereof at a meeting duly called for that purpose, may designate one arbitrator for such board.

**Consent; oath; powers of arbitrators.**

§ 147. Before entering upon his duties, each arbitrator so selected shall sign a consent to act and take and subscribe an oath to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be filed in the clerk's office of the county or counties where the controversy arose. When such board is ready for the transaction of business, it shall select one of its members to act as secretary, and notice of the time and place of hearing shall be given to the parties to the controversy.

The board may, through its chairman subpoena witnesses, compel their attendance and take and hear testimony.

The board may make and enforce rules for its government and the transaction of the business before it, and fix its sessions and adjournments.

**Decision of arbitrators.**

§ 148. The board shall, within ten days after the close of the hearing, render a written decision signed by them giving such details as clearly show the nature of the controversy and the questions decided by them. Such decision shall be a settlement of the matter submitted to such arbitrators, unless within ten days thereafter an appeal is taken therefrom to the state board of mediation and arbitration.

One copy of the decision shall be filed in the office of the clerk of the county or counties where the controversy arose and one, copy shall be transmitted to the secretary of the state board of mediation and arbitration.

**Appeals.**

§ 149. The state board of mediation and arbitration shall hear, consider and investigate every appeal to it from any such board of local arbitrators and its decisions shall be in writing and a copy thereof filed in the clerk's office of the county or counties where the controversy arose and duplicate copies served upon each party to the controversy. Such decision shall be final and conclusive upon all parties to the arbitration.

\* \* \* \* \*

See sections of the Penal Code, *post*.

**CHAP. 418, LAWS OF 1897.**

AN ACT in relation to liens, constituting chapter forty-nine of the general laws.

\* \* \* \* \*

**Liens for labor on railroads.**

§ 6. Any person who shall hereafter perform any labor for a railroad corporation shall have a lien for the value of such labor upon the railroad track, rolling-stock and appurtenances of such railroad corporation and upon the land upon which such railroad track and appurtenances are situated, by filing a notice of such lien in the office of the clerk of any county wherein any part of such railroad is situated, to the extent of the right, title and interest of such corporation in such property, existing at

the time of such filing. The provisions of this article relating to the contents, filing and entry of a notice of a mechanic's lien, and the priority and duration thereof, shall apply to such liens. A copy of the notice of such lien shall be personally served upon such corporation within ten days after the filing thereof in the manner prescribed by the code of civil procedure for the service of summons in actions in justices' courts against domestic railroad corporations.

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#### Conditional sale of railroad equipment and rolling stock.

§ 111. Whenever any railroad equipment and rolling stock is sold, leased or loaned under a contract which provides that the title to such property, notwithstanding the use and possession thereof by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of installments, amounts or rentals payable, or the performance of other obligations thereunder, are fully complied with and that title to such property shall pass to the vendee, lessee or other bailee on full payment therefor, such contract shall be invalid as to any subsequent judgment creditor of or purchaser from such vendee, lessee or bailee for a valuable consideration, without notice, unless

1. Such contract is in writing, duly acknowledged and recorded in the book in which real estate mortgages are recorded in the office of the county clerk or register of the county in which is located the principal office or place of business of such vendee, lessee or bailee; and unless

2. Each locomotive or car so sold, leased or loaned, has the name of the vendor, lessor or bailor, or of the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

See sections 48, 54 and 55, Stock Corporation Law; section 30, Railroad Law; chap. 392, Laws of 1875, section 8, Labor Law, *ante*; chap. 419, Laws of 1897, *post*.

Other provisions of the Lien Law apply to railroads. See sections 3398-3441 of the Code of Civil Procedure, relating to the enforcement of mechanics' liens and liens on vessels; it is deemed advisable to publish but one of them here, as follows:

## CHAP. 419, LAWS OF 1897.

AN ACT to amend the code of civil procedure, relating to the enforcement of mechanics' liens on real property and liens on vessels.

\* \* \* \* \*

in actions to foreclose a Judgment mechanic's lien on property of a railroad corporation.

§ 3419. If the lien is for labor done or materials furnished for a railroad corporation, upon its land, or upon or for its track, rolling stock or the appurtenances of its railroad, the judgment shall not direct the sale of any of the real property described in the notice of the lien, but when in such case, a judgment is entered and docketed with the county clerk of the county where the notice of lien is filed, or a transcript thereof is filed and docketed in any other county, it shall be a lien upon the real property of the railroad corporation, against which it is obtained, to the same extent, and enforceable in like manner as other judgments of courts of record against such corporation.

\* \* \* \* \*

See sections 48, 54 and 55, Stock Corporation Law; section 30, Railroad Law; chap. 392, Laws of 1875; section 8, Labor Law; chap. 418, Laws of 1897, *ante*.

## CHAP. 592, LAWS OF 1897.

AN ACT in relation to navigation, constituting chapter thirty of the general laws.

\* \* \* \* \*

Lights upon swing-bridges.

§ 40. Every corporation, company or individual, owning, maintaining or operating a swing-bridge across the Hudson river shall, during the season of navigation between sundown and sunrise keep and maintain the following lights: Upon every swing-bridge with water on each side of pivot pier, eight lights, located as follows: One red light on or over the north and one on or over the south end of the east rest piers; one red light on or over the north and one on or over the south end of the west

rest pier, and a green light on each corner of the bridge when open. If there is a waterway on only one side of the pivot pier, five lights, located as follows: One red light on or over the north and one on or over the south end of the rest pier nearest the channel, and a green light upon each end of the bridge when open upon the corners nearest the channel. Such lights shall be of the usual brilliancy of lights used for such purposes and known as signal lanterns.

See section 433a, Penal Code, *post*.

### CHAP. 612, LAWS OF 1897.

#### NEGOTIABLE INSTRUMENT LAW.

(This act contains general provisions affecting railroads, but it is not thought necessary to print portions of it here.)

### \*CHAP. 663, LAWS OF 1897.

AN ACT providing for and regulating the carriage of passengers across the New York and Brooklyn bridge and affecting the rates of fare therefor.

SECTION 1. The trustees of the New York and Brooklyn bridge are hereby authorized and empowered to abolish all fares upon the railroadways of the said bridge, save and except as hereinafter provided.

§ 2. The said trustees may continue to maintain and to operate the present railroad on said bridge and to charge such fares for the carriage of passengers thereon as they may deem fit, but not, however, in excess of the present rate.

§ 3. And the said trustees are hereby authorized and empowered to contract with any street surface or elevated railroad corporation or corporations, operating its or their roads in either the city of New York or the city of Brooklyn, respectively permitting its or their carriage of passengers across the said bridge, but each and every contract therefor must provide that said corporation will not charge any fare in excess of, or additional to, the fare exacted by it from any passenger for one continuous ride upon any of its routes in either of the cities of New York

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\*While this is not a general act, it is deemed of enough importance to print here.

or Brooklyn, as the case may be, so that the said route of said corporation or corporations operated across said bridge under said contract, so far as the exaction of a fare is concerned, shall be taken and deemed to be a part of the continuous route or one of the continuous routes of said railroad corporation or corporations whereon one fare is exacted, so that no extra or additional fare shall be exacted by any such street surface or elevated railroad corporation from any passenger carried to or from the bridge and across the bridge in addition to the fare exacted from such passenger for carriage to and from the bridge only, but nothing in this act shall be construed as preventing the said trustees from making a proper charge to any railroad corporation for each car crossing said bridge.

§ 4. Within sixty days after the passage of this act, the said trustees shall prepare plans and specifications regulating the operation over said bridge of the cars of such corporation or corporations with whom it may contract, as such trustees shall deem best adapted to promote the public comfort and convenience and to subserve the purposes for which said bridge was constructed, and, except as otherwise provided by said trustees, such plans and specifications shall be in substantial conformity with the plans recommended to the said trustees by Virgil G. Bogue, George H. Thompson and Leffert L. Buck, expert engineers, by their report bearing date February eighth, eighteen hundred and ninety-seven. And said trustees shall also prepare such form of contracts and specifications thereunder as they shall deem best fitted for the public interests, regulating the operation of the said cars of the said corporation or corporations and the establishment of its route or their route upon said bridge, and shall have power to exact such bond or obligation as they may deem proper for the faithful performance of any contract or contracts made with any and all of said corporations, as aforesaid.

§ 5. All acts and parts of acts inconsistent with this act are hereby repealed.

See chap. 712, Laws of 1901, *post*.

**\*CHAP. 683, LAWS OF 1897.**

AN ACT to regulate the exercise of their franchises by certain public corporations by requiring them to afford facilities for the transaction of the public business to certain public officers and employes of the city of New York.

SECTION 1. The mayor of the city of New York may issue under the seal of his office to each policeman and fireman appointed by the duly constituted authorities of said city a certificate of the appointment and qualification of such policeman or fireman as such, and specifying the duration of his term of office; and it shall be thereupon the duty of every street surface, elevated railroad or railroad company operating cars by steam or electricity and carrying on business within said city to transport every such policeman or fireman free of charge while he is traveling in the course of the performance of the duties of his office within said city limits. Every telegraphic or telephone company engaged in business within such city or† village, shall afford to such policeman or fireman the use of its telegraph lines or telephones for the purpose of making and receiving reports and communications in the course of the performance of his official duty.

§ 2. Every policeman or fireman who shall permit any other person to use the certificate issued to him as provided by this act, or to present or make use of the same, except while acting in the course of the performance of his official duties, or who shall use such certificate after the expiration of his term of office or his resignation or removal therefrom, shall be deemed guilty of a misdemeanor.

See chap. 417, Laws of 1895, *ante*.

See *Wilson v. United Traction Company*, 72 Appellate Division, p. 233.

\*While this is not a general act, it is deemed of enough importance to print here.

†So in original.



## CHAP. 182, LAWS OF 1898.

AN ACT for the government of cities of the second class.

\* \* \* \* \*

§ 19. No ordinance shall be passed by the common council on the same day in which it is introduced, except by unanimous consent, and no appropriation of money shall be made for any purpose, except by an ordinance, passed by three-fourths of all the members, specifying by items the amount thereof and the department or specific purpose for which the appropriation is made; and no ordinance shall be passed making or authorizing a sale or lease of city real estate or of any franchise belonging to or under the control of the city, except by a vote of three-fourths of all the members of the common council; and in case of the proposed sale of real estate or the proposed sale or proposed lease of a franchise, except as hereinafter provided, the ordinance must provide for a disposition, under proper regulations for the protection of the city, at public auction, after public notice for at least three weeks, to the highest bidder; and a proposed sale or proposed lease thus originated shall not be valid nor take effect, unless the aforesaid notice shall have been given and the aforesaid disposition, namely, a sale at public auction to the highest bidder shall have been had, and unless subsequently approved by a resolution of the board of estimate and apportionment. No such franchise shall be granted or be operated for a period longer than fifty years. The common council may, however, grant to the owner or lessees of an existing franchise, under which operations are being actually carried on, such additional rights or extensions, in the street or streets in which the said franchise now exists, upon such terms as the interests of the city may require, with or without sale and advertisement, as said common council may determine; provided however, that no such grant shall be operative unless subsequently approved by resolution of the board of estimate and apportionment, and also by the mayor.

Thus amended by chap. 454, Laws of 1904.

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§ 150. When a street has once been established, graded, paved, flagged and curbed at the expense of the owners of property deemed to be benefited thereby, every expense thereafter of keeping the street between the sidewalks in repair and clean shall be borne wholly by the city, except that it shall be the duty of all railroad companies to cause that part of the streets throughout the city upon which their tracks are laid, lying between the outer rails of the tracks and for two feet on either side thereof, to be kept in repair under the direction of the commissioner of public works.

\* \* \* \* \*

Other provisions of this act apply to railroad companies. See sections 93 and 98, Railroad Law, *ante*.

#### CHAP. 217, LAWS OF 1898.

AN ACT to carry into effect the provisions of chapter seven hundred and fifty-four of the laws of eighteen hundred and ninety-seven, entitled "An act to amend the railroad law and the acts amendatory thereof, relative to grade crossings," and making an appropriation therefor.

SECTION 1. The sum of one hundred thousand dollars is hereby appropriated out of any moneys in the treasury not otherwise appropriated to carry into effect the provisions of chapter seven hundred and fifty-four of the laws of eighteen hundred and ninety-seven, entitled "An act to amend the railroad law and the acts amendatory thereof, relative to grade crossings."

§ 2. The board of railroad commissioners is hereby authorized and empowered to expend an amount not exceeding ten thousand dollars in the employment of expert and clerical service necessary to supervise the work performed under the said chapter seven hundred and fifty-four of the laws of eighteen hundred and ninety-seven, and to prepare plans, maps and specifications therefor; said ten thousand dollars to be paid by the treasurer upon the warrant of the comptroller, as directed by the said board of railroad commissioners, from the money appropriated by this act.

## CHAP. 263, LAWS OF 1898.

AN ACT for the relief of certain railroad corporations.

SECTION 1. Any railroad corporation that was duly incorporated after the year eighteen hundred and eighty-five, under the provisions of chapter one hundred and forty, of the laws of eighteen hundred and fifty, and the acts amendatory thereof, and that within two years after its certificate of incorporation was filed, began the construction of its road and expended five hundred thousand dollars thereon, but failed to finish its road and put it in operation within ten years from the time of filing such certificate, shall be entitled to, and have all the rights and be subject to all the obligations intended or provided by the next section of this act.

§ 2. Any such company or corporation may finish its road and put it in operation; and the rights, powers, privileges, franchises, obligations, duties, restrictions and limitations of any such corporation shall be as though the time heretofore provided by law to finish its road and put it in operation, had been fifteen years from the date of filing its certificate of incorporation; and all rights or franchises acquired by any such corporation to construct its road in, upon, along or across any street or highway, and all proceedings to locate or extend its route or change its termini, or acquire any franchise, and all liens or obligations against any such corporation are hereby expressly conferred, imposed and continued to the same effect as though the time for finishing its road had been fifteen years as aforesaid. This act shall not apply to any street railroad, whether surface, elevated or depressed, nor to any railroad more than twenty miles in length.

See chap. 495, Laws of 1898, and chapters 597 and 626, Laws of 1903, *post*; section 5 and other provisions of the Railroad Law, *ante*;

**CHAP. 491, LAWS OF 1898.**

**AN ACT** to amend chapter three hundred and thirty-eight, laws of eighteen hundred and ninety-three, entitled "An act in relation to agriculture, constituting articles one, two, three, four and five of chapter thirty-three of the general laws," in relation to sale and transportation of calves.

**SECTION 1.** Chapter three hundred and thirty-eight, laws of eighteen hundred and ninety-three, entitled "An act in relation to agriculture, constituting articles one, two, three, four, five, six and seven of chapter thirty-three of the general laws," is hereby amended by adding the following sections, to be known as section seventy-one, seventy-two and seventy-three.

§ 71. No person shall slaughter, for the purpose of selling the same for food, or expose for sale or sell within this state, or bring or cause to be brought into any city, town or village within this state for food any calf or carcass of the same, or any part thereof except the hide, unless it is in good, healthy condition, and was at least four weeks of age at the time of killing. Any person or persons duly authorized by the commissioner of agriculture, may examine any calf or veal found within this state offered or exposed for sale, or kept with intent to sell as food, and if, such calf is under four weeks of age, or the veal is from a calf killed under four weeks of age, or from a calf in an unhealthy condition when so killed, he may seize the same and cause it to be destroyed or disposed of in such manner as to make it impossible to be thereafter used as food.

§ 72. On and after the passage of this act it shall be unlawful for any corporation, partnership, person or persons to ship to or from any part of this state any carcass or carcasses of a calf or calves or any part of such carcass except the hide, unless they shall attach to every carcass or part thereof so shipped in a conspicuous place a tag, that shall stay thereon during such transportation, stating the name or names of the person or persons who raised the calf, the name of the shipper, the points of shipping and the destination and the age of the calf.

§ 73. On and after the passage of this act, no railroad company, express company, steamboat company, or other common carrier, shall carry or receive for transportation any carcass or carcasses of calves, or any part of the same except the hide, unless the said carcass or carcasses or parts thereof shall be tagged as herein provided.

See sections 70-e, 70-f and 70-g, Agricultural Law, *ante*.

#### CHAP. 495, LAWS OF 1898.

AN ACT to extend the time for the commencement of construction or the completion of railroads that have been placed in the hands of receivers by the supreme court.

SECTION 1. All railroad corporations that have been organized under the laws of this state, and have been placed in the hands of a receiver or receivers by the supreme court of this state, and that are now in the hands of such receiver or receivers, are hereby granted five years from and after the passage of this act within which to complete their said roads, and the charter or charters of such companies shall not be deemed or taken as forfeited by their failure to complete their said roads within the time originally limited in the general laws of this state for the completion of such roads. And the said companies are hereby authorized to proceed and build their said roads and complete the same within five years after the passage of this act, and the corporate powers and rights shall not be deemed or held to have ceased by reason of lapse of time or by reason of the appointment of such a receiver or receivers.

See chap. 263, Laws of 1898, section 5 and other provisions of the Railroad Law, *ante*, and chapters 597 and 626, Laws of 1903, *post*.

#### CHAP. 522, LAWS OF 1898.

AN ACT to authorize and empower receivers of corporations appointed by a judgment or order in an action or special proceeding to sell the property of the corporation at private sale.

SECTION 1. A receiver duly appointed in this state by and pursuant to a judgment in an action, or by and pursuant to an

order in a special proceeding, may, upon application to the court by which such judgment was rendered, or such order was made, and upon notice to such parties as may be entitled to notice of applications made in such action or special proceedings, be authorized by the said court to sell or convey the property, whether real or personal, of the corporation of which he is the receiver, at private sale, upon such terms and conditions as the court may direct.

§ 2. All sales of the property of a corporation heretofore made at private sale by such a receiver, and conveyances thereof, where such sales or conveyances have been authorized or directed by the court having jurisdiction of the action or special proceeding in which such receiver was appointed, are hereby ratified and confirmed in so far as the legal capacity and statutory power of the receiver to make the same are concerned.

See chap. 378, Laws of 1883; chap. 285, Laws of 1884; chap. 310, Laws of 1886, and sections 5, Stock Corporation Law and 76, Railroad Law, *ante*; and chap. 534, Laws of 1898, and chap. 404, Laws of 1902, *post*.

#### CHAP. 534, LAWS OF 1898.

AN ACT to facilitate the collection and recovery of the assets of corporations for which receivers have been appointed.

SECTION 1. Whenever any receiver of a domestic corporation, or of the property within this state of any foreign corporation, shall have been appointed and qualified, as provided in title two of chapter fifteen, or title eleven of chapter seventeen, of the code of civil procedure, either before, upon, or after final judgment or order in the action or special proceeding in which such appointment was made, shall, by his own verified petition, affidavit or other competent proof, show to the supreme court, at a special term thereof, held within the judicial district wherein such appointment was made, that he has good reason to believe that any officer, stockholder, agent or employe of such corporation, or any other person whomsoever, has embezzled or concealed, or withholds or has in his possession or under his control, or has wrongfully disposed of, any property of such corporation which of right ought to be surrendered to the receiver thereof; or that any person can testify concerning the embezzle-

ment, concealment, withholding, possession, control or wrongful disposition of any such property, the court shall make an order, with or without notice, commanding such person or persons to appear at a time and place to be designated in the order, before the court or before a referee named by the court for that purpose, and to submit to an examination concerning such embezzlement, concealment, withholding, possession, control or wrongful disposition of such property; and at the time of making such order or at any time thereafter, the court may, in its discretion, enjoin and restrain the person or persons or ordered to appear and be examined from in any manner disposing of any property of such corporation which may be in the possession or under the control of the person so ordered to be examined, until the further order of the court in relation thereto. No person so ordered to appear and be examined shall be excused from answering any question on the ground that his answer might tend to convict him of a criminal offense; but his testimony taken upon such examination shall not be used against him in any criminal action or proceeding.

§ 2. Any person so ordered to appear and be examined shall be entitled to the same fees and mileage, to be paid at the time of serving the order, as are allowed by law to witnesses subpoenaed to attend and testify in an action in the supreme court, and shall be subject to the same penalties upon failure to appear and testify in obedience to such an order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

§ 3. Any person appearing for examination in obedience to such order shall be sworn by the court or referee to tell the truth, and shall be entitled to be represented on such examination by counsel, and may be cross-examined, or may make any voluntary statement in his own behalf concerning the subject of his examination which may seem to him desirable or pertinent thereto.

§ 4. The court before which such examination is taken, as well as the referee, if one be appointed for that purpose, shall

have power to adjourn such examination from time to time, and may rule upon any question or objection arising in the course of such examination, to the same extent that might be done if the person so examined were testifying as a witness in the trial of an action.

§ 5. When the examination of any person under such order shall be concluded, the testimony shall be signed and sworn to by the person so examined, and shall be filed in the office of the clerk of the county where the action is pending, or was tried, in which the receiver was appointed; and if from such testimony it shall appear to the satisfaction of the court that any person so examined is wrongfully concealing or withholding, or has in his possession or under his control, any property which of right belongs to such receiver, the court may make an order commanding the person so examined forthwith to deliver the same to such receiver, who shall hold the same subject to the further order of the court in relation thereto; and otherwise, the court may, at the conclusion of any such examination, make such final order in the premises as the interests of justice require.

See chap. 378, Laws of 1883; chap. 285, Laws of 1884; chap. 310, Laws of 1886; chap. 522, Laws of 1898; and sections 5, Stock Corporation Law, and 76, Railroad Law, *ante*; and chap. 404, Laws of 1902, *post*.

#### CHAP. 574. LAWS OF 1898.

AN ACT to amend the code of civil procedure, section one hundred and ninety-one, relative to appeals to the court of appeals.

SECTION 1. Section one hundred and ninety-one of the code of civil procedure is hereby amended so as to read as follows:

##### Limitations, exceptions and conditions.

§ 191. The jurisdiction conferred by the last section is subject to the following limitations, exceptions and conditions:

1. No appeal shall be taken to said court, in any civil action or proceeding commenced in any court other than the supreme court, court of claims, county court, or a surrogate's court, unless the appellate division of the supreme court allows the appeal by



an order made at the term which rendered the determination, or at the next term after judgment is entered thereupon and shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals.

2. No appeal shall be taken to said court from a judgment of affirmance hereafter rendered in an action to recover damages for a personal injury, or to recover damages for injuries resulting in death, or in an action to set aside a judgment, sale, transfer, conveyance, assignment or written instrument, as in fraud of the rights of creditors, or in an action to recover wages, salary or compensation for services, including expenses incidental thereto, or damages for breach of any contract therefor, or in an action upon an individual bond or individual undertaking on appeal, when the decision of the appellate division of the supreme court is unanimous, unless such appellate division shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals, or unless in case of its refusal to so certify, an appeal is allowed by a judge of the court of appeals.

Subdivision 2 thus amended by chap. 592, Laws of 1900, taking effect September 1, 1900.

3. The jurisdiction of the court is limited to a review of questions of law.

4. No unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the court of appeals.

#### CHAP. 597, LAWS OF 1898.

AN ACT to provide for a change of motive power in the operation of certain railways in and near public parks in the cities of the state of New York.

SECTION 1. Any railroad company having the right to use any railway now constructed in any public tunnel, road or way depressed below the surface of and wholly within any public park in any city within the state of New York having a population

of one million five hundred thousand or upwards, may change the motive power and operate any such railway by cable power, underground current of electricity, compressed air, or any other motive power other than locomotive steam power, that may be consented to by the authorities having control of such park or parks, and by the board of railroad commissioners of the state of New York, and may make changes in the construction of the road or roadbed or other property made necessary by the change of motive power. Such reconstruction shall be at the sole cost and expense of the railroad company making such change, and when completed such improved railway shall be the property of the municipal corporation having control of such public tunnel, road or depressed way.

See section 100, Railroad Law, *ante*.

#### CHAP. 201, LAWS OF 1899.

AN ACT to facilitate the proving of the incorporation of new corporations formed by the consolidation of two or more corporations.

SECTION 1. Where two or more corporations have been or shall hereafter be, consolidated and merged into a new corporation, a certificate of the secretary of state under his official seal concisely stating the names of the respective corporations consolidated, the dates of the filing of the certificates respectively of the incorporation of such corporations in his office, the object for which they were formed, including the nature and locality of their business as set forth in their respective incorporation papers on file in his office, the date of the filing of the consolidation agreement and other proceedings in his office, the name of the new corporation formed by such consolidation and merger, the term of its incorporate existence, the place where its principal office is situated and the amount of its capital stock, shall be presumptive and *prima facie* evidence in all actions and special proceedings for all purposes of the incorporation of the corporations so consolidated, the incorporation of the new corporation by such consolidation and merger from the date of filing

of said consolidation agreement and proceedings, and of the other facts so certified by him.

See section 70 *et seq.*, Railroad Law, and chap. 193, Laws of 1897, *ante*; chap. 30, Laws of 1903, *post*.

#### CHAP. 320, LAWS OF 1899.

AN ACT to amend section three hundred and forty-one of the code of civil procedure, relating to jurisdiction of county courts.

SECTION 1. Section three hundred and forty-one of the code of civil procedure is hereby amended so as to read as follows:

§ 341. For the purpose of determining the jurisdiction of a county court, in either of the cases specified in the last section, a domestic corporation or joint-stock association, whose principal place of business is established, by or pursuant to a statute, or by its articles of association, or is actually located within the county, or in case of a railroad corporation where any portion of the road operated by it is within the county, it is deemed a resident of the county; and personal service of a summons, made within the county, as prescribed in this act, or personal service of a mandate, whereby a special proceeding is commenced, made within the county, as prescribed in this act for personal service of a summons, is sufficient service thereof upon a domestic corporation wherever it is located.

§ 2. This act shall take effect September first, eighteen hundred and ninety-nine.

#### CHAP. 488, LAWS OF 1899.

AN ACT authorizing the sale of property left in street surface railroad cars, and the disposition of the proceeds thereof.

SECTION 1. It shall be the duty of every street surface railway corporation doing business in this state, which shall have unclaimed property left in its cars, to ascertain if possible, the owner or owners of such property, and to notify such owner or owners of the fact by mail as soon as possible, after such property comes into its possession. Every such corporation which shall have such property not perishable, in its possession for the

period of three months, may sell the same at public auction, after giving notice to that effect, by one publication, at least ten days prior to the sale, in a daily newspaper published in the city or village in which such sale is to take place, of the time and place at which such sale will be held, and such sale may be adjourned from time to time until all the articles offered for sale are sold. All perishable property so left, may be sold by any such street surface railroad corporation without notice, as soon as it can be, upon the best terms that can be obtained.

§ 2. All moneys arising from the sale of any such unclaimed property, after deducting charges for storage and expenses of sale, shall be paid by any such corporation to the treasurer of any association, composed of the employees of such street railroad corporation, having for its object the pecuniary assistance of its members in case of disability caused by sickness or accident, for the use and benefit of such association and its members; and where no such association of the employees of any such street railroad corporation is in existence at the time of any such sale, such moneys shall be paid over to the county treasurer of the county in which such sale took place for the benefit of such county.

See section 46, Railroad Law, *ante*; chap. 313, Laws of 1901, *post*.

#### CHAP. 497, LAWS OF 1899.

AN ACT to regulate the use of lands forming part of the right of way of any railroad company, the road of which has been removed from the surface in, or adjacent to, streets and highways in all cities of the first class in this state.

SECTION 1. Whenever the right of way, grade or tracks of any steam railroad company in or adjacent to any street or highway in any city of the first class are required by law to be changed or altered by elevating or depressing the same for the purpose of discontinuing the use of steam power upon the surface of such highway or street, such alteration or change of grade shall not be deemed to curtail or affect any right which such railroad company or its lessees or assigns may have to maintain and operate a surface passenger railway within the limits

of the right of way so depressed or elevated, and over and under the railroad tracks so depressed or elevated, with all turnouts, sidings and tracks necessary to secure the continuous connection and operation of such surface railroad.

§ 2. In the event that any such turnouts, sidings or tracks shall extend beyond the lines of the right of way of such railroad corporations so depressed or elevated, in or upon any of the streets or highways aforesaid, such turnouts, sidings or tracks so extending beyond the lines of such right of way shall only be constructed upon condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of such street or highway upon which it is proposed to construct or operate such turnouts, sidings or tracks, shall be first obtained; or, in case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department where such construction is proposed, may upon application appoint three commissioners who shall determine, after a hearing of all parties interested, whether such turnouts, sidings and tracks so extending beyond the limits of such right of way and on said highway ought to be constructed or operated; and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

§ 3. Any such surface railroad shall be operated by some power other than steam locomotives, and shall not be used except for passenger traffic.

#### CHAP. 690, LAWS OF 1899.

AN ACT to prevent monopolies in articles or commodities of common use, and to prohibit restraints of trade and commerce, providing penalties for violations of the provisions of this act, and procedure to enable the attorney-general to secure testimony in relation thereto.

SECTION 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is

or may be created, established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

§ 2. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding five thousand dollars.

§ 3. The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act, in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

§ 4. Whenever the attorney-general has determined to commence an action or proceeding under this chapter, he may present to any justice of the supreme court, before beginning such action or proceeding under this chapter, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrange-

ment, agreement or combination in violation of this chapter; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show, upon his information and belief that the testimony of such person or persons is material and necessary. The provisions of article one, of title three, of chapter nine of the code of civil procedure, relating to the application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examinations shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office, within this state, of the corporation affected, is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county in which such order for examination is filed.

§ 5. The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an endorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such indorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above

provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this state.

§ 6. No person shall be excused from answering any questions that may be put to him, or from producing any books, papers or documents, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said justice or referee appointed in the order for his examination, or in obedience to the subpoena of the court, or referee acting under such order, or either of them or in any such case or proceeding.

§ 7. A referee appointed as provided in this act possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this act for non-attendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

§ 8. Chapter three hundred and eighty-three of the laws of eighteen hundred and ninety-seven is hereby repealed.

See sections 7, 30, 53 and 60, Stock Corporation Law, *ante*. See 155 N. Y., p. 441; also other decisions.

## CHAP. 20, LAWS OF 1900.

AN ACT for the protection of the forests, fish and game of the state, constituting chapter thirty-one of the general laws.

### ARTICLE I.

\* \* \* \* \*

#### Transportation.

§ 8. Deer or venison killed in this state shall not be transported from or through any county, or possessed for that pur-



pose, except as follows: One carcass or a part thereof may be transported from the county where killed when accompanied by the owner. No person shall transport or accompany more than two deer in any year under this section. Possession of deer or venison by a common carrier, or by any person in its employ while engaged in the business of such common carrier, unaccompanied by the owner shall constitute a violation of this section by such common carrier. This section does not apply to the head, feet or skin of deer if carried separately.

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Wild moose, elk, caribou and antelope.

§ 11. There shall be no open season for wild moose, elk, caribou or antelope, but they may be brought into the state for breeding purposes. The flesh or any portion of any such animal shall not be possessed, sold or transported during the close season for deer or during the open season for deer unless the animal was killed without the state or by the owner thereof in a private park within the state during the open season for deer. Possession thereof during such open season shall be presumptive evidence that it was unlawfully taken by the possessor. The forest, fish and game commission may acquire by gift, purchase or capture, a sufficient number of wild moose and elk to stock the Adirondack region, and may care for, herd and yard the same temporarily, and liberate them in such region, at such times and places as it deems most conducive to their probable subsistence and increase.

Thus amended by chap. 587, Laws of 1904.

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### Penalties.

\*§ 16. A person who violates any provision of this article is guilty of a misdemeanor, and in addition thereto, is liable as follows: For each violation of sections one to eleven, both inclusive, to a penalty of one hundred dollars, and for each deer, elk, caribou, antelope or part of any such animal taken or possessed in violation of any provision of any of said sections, an additional penalty of one hundred dollars; for each wild moose or

\*See last Section 16.

part of such animal taken or possessed in violation of any provision of said sections, an additional penalty of two hundred and fifty dollars; for each violation of section twelve, to a penalty of twenty-five dollars, and for each squirrel or part thereof taken or possessed in violation of said section, an additional penalty of ten dollars; for each violation of section thirteen, a penalty of twenty-five dollars, and for each rabbit taken or possessed in violation of such section, an additional penalty of ten dollars; for each beaver or otter taken in violation of section fourteen, to a penalty of fifty dollars, and for each violation of section fifteen, to a penalty of twenty-five dollars. A person convicted of a misdemeanor for a violation of section eleven of this article shall be punished by imprisonment for a term of not less than three months nor more than one year.

Thus amended by chap. 580, Laws of 1904. It became a law May 3, 1904.

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#### Penalties.

\*§ 16. A person who violates any portion of this article is guilty of a misdemeanor, and in addition thereto is liable as follows: For each violation of sections one to eleven both inclusive, to a penalty of one hundred dollars, and for each deer, elk, caribou, antelope or part of any such animal taken or possessed in violation of any provision of any of said sections, an additional penalty of one hundred dollars; for each wild moose or part of such animal taken or possessed in violation of any provision of said sections, an additional penalty of two hundred and fifty dollars; for each wild black bear taken or possessed in violation of section eleven-a, an additional penalty of fifty dollars; for each violation of section twelve, to a penalty of twenty-five dollars, and for each squirrel or part thereof taken or possessed in violation of said section, an additional penalty of ten dollars; for each violation of section thirteen, a penalty of twenty-five dollars, and for each rabbit taken or possessed in violation of said section, an additional penalty of ten dollars; for each

\*See last Section 16.

beaver or otter taken in violation of section fourteen, to a penalty of fifty dollars, and for each violation of section fifteen, to a penalty of twenty-five dollars. A person failing to file a report with the forest, fish and game commission of killing or taking a wild black bear under provision of section eleven-a shall be liable to a penalty of twenty-five dollars. A person convicted of a misdemeanor for a violation of section eleven of this article shall be punished by imprisonment for a term of not less than three months nor more than one year.

Thus amended by chap. 630, Laws of 1904. It became a law May 9, 1904.

### Penalties.

§ 16. A person who violates any provision of this article is guilty of a misdemeanor, and in addition thereto, is liable as follows: For each violation of sections one to eleven, both inclusive, to a penalty of one hundred dollars, and for each deer, elk, caribou, antelope, or part of any such animal taken or possessed in violation of any provision of any of said sections, an additional penalty of one hundred dollars; for each wild moose or part of such animal taken or possessed in violation of any provision of said sections, an additional penalty of two hundred and fifty dollars; for each wild black bear taken or possessed in violation of section eleven-a, a penalty of fifty dollars; for each violation of section twelve, to a penalty of twenty-five dollars, and for each squirrel or part thereof taken or possessed in violation of said section, an additional penalty of ten dollars; for each violation of section thirteen, a penalty of twenty-five dollars, and for each rabbit taken or possessed in violation of such section, an additional penalty of ten dollars; for each beaver taken in violation of section fourteen to a penalty of one hundred dollars; for each violation of section fifteen, to a penalty of twenty-five dollars; and for each violation of section fifteen-a to a penalty of ten dollars. A person failing to file a report with the forest, fish and game commission of killing or taken\* of a wild black bear under provision of section eleven-a shall be liable

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\*So in original.

to a penalty of twenty-five dollars. A person convicted of a misdemeanor for a violation of section eleven of this article shall be punished by imprisonment for a term of not less than three months nor more than one year.

Thus amended by chap. 319, Laws of 1905.

## ARTICLE II.

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### Woodcock, grouse and quail, not to be transported.

§ 29. Woodcock, grouse and quail shall not be transported within this state or into the state from a point without the state less than twenty-five miles from the state line, unless accompanied by the actual owner thereof, and no person shall transport or accompany more than thirty-six grouse or thirty-six woodcock in any calendar year, or more than twelve of either kind at one time. Possession thereof by a common carrier, or employee thereof, at the time actually engaged in the business of such common carrier, unaccompanied by the actual owner thereof shall constitute a violation of this section by such employee and common carrier. No common carrier or person in its employ shall transport such birds as owner.

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### Taking game in Westchester county.

§ 37. Game shall not be taken in a public highway, or on the lands of a railway or lands purchased or condemned for the Croton aqueduct within the county of Westchester.

### Birds and game not transported.

§ 38. Birds or quadrupeds or parts thereof, game, except fish taken in this state, shall not except as herein provided be transported without the state; nor shall the same be taken or possessed with intent to transport the same without the state. Any person doing any act with reference to such birds or game in aid of such taking or transportation with knowledge of the intention to so transport the same shall be deemed to have violated this section.

This section does not apply to the head, feet or skin of deer when severed from the carcass, or to quadrupeds named in section fifteen of this act.

Thus amended by chap. 580, Laws of 1904.

### Penalties.

§ 39. A person who violates any provision of this article is guilty of a misdemeanor, and is liable to a penalty of sixty dollars and to an additional penalty of twenty-five dollars for each bird, or quadruped or part of bird or quadruped bought, sold, offered for sale, taken, possessed, transported or had in possession for transportation in violation thereof.

Thus amended by chapter 318, Laws of 1905.

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### ARTICLE III.

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### Certain fish not to be transported.

§ 60. Lake trout taken in inland waters and trout shall not be transported in this state except when accompanied by the actual owner. No person shall transport or accompany at any one time more than twelve pounds of trout. Possession of lake trout or trout by a common carrier or employee thereof, while actually engaged in the business of such common carrier, unaccompanied by the actual owner, shall constitute a violation of this section by such employee and common carrier.

\* \* \* \* \*

### Penalties.

§ 69. A person who violates any of the provisions of this article is guilty of a misdemeanor and in addition thereto is liable as follows: For each violation of section forty-three in relation to waters inhabited by trout, of sections fifty-two and fifty-three in relation to polluting streams, section fifty-four relating to drawing off water, section fifty-six in relation to explosives, section sixty in relation to transportation of fish, section sixty-three in relation to the use of net and angling, section sixty-six

in relation to thumping, and section sixty-seven relative to carp in Conesus and Hemlock lakes in the county of Livingston, a penalty of sixty dollars, for all other violations of said article, a penalty of twenty-five dollars and an additional penalty of ten dollars for each fish taken or possessed in violation thereof.

Thus amended by chap. 583, Laws of 1904.

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## ARTICLE VII.

### Definitions.

§ 140. The following words and phrases used in this act are defined as follows:

1. "Grouse" includes ruffed grouse, partridge and every member of the grouse family.

2. "Trout" includes speckled trout, brown trout, rainbow trout, red throat trout and brook trout.

3. "Lake trout" for the purposes of this act includes landlocked salmon and ouananiche.

4. "Black bass" includes Oswego bass.

5. "Pike" for the purposes of this act includes wall-eyed pike.

6. "Angling" means taking fish by hook and line in hand or rod in hand; or if from a boat not exceeding two lines with or without rod to one person.

7. It is unlawful to take fish or game during time described as "close season." Fish and game for which close seasons are established may be hunted and caught in a lawful manner during that part of the year which is not included in such close seasons respectively. The "open season" is that part of the year when they may be taken in a lawful manner.

Subdivision 7 thus amended by chap. 593, Laws of 1900.

8. "Taking" includes pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish and game, and all lesser acts such as disturbing, harrying or worrying, or placing, setting, drawing, or using any net or other device commonly used to take fish and game, whether they result in taking or not; and includes every attempt to take and every act of assistance to every other

person in taking or attempting to take fish or game. A person who counsels, aids or assists in a violation of any of the provisions of the forest, fish and game law, or knowingly shares in any of the proceeds of said violation by receiving or possessing either fish, birds, game or timber, shall be deemed to have incurred the penalties provided in this act against the person guilty of such violation. Whenever taking is allowed by law, reference is had to taking by lawful means and in lawful manner.

Subdivision 8 thus amended by chap 580, Laws of 1904.

9. "Person" includes a co-partnership, joint stock company or corporation.

10. Where lands are referred to as "inclosed," the boundary may be indicated by wire, ditch, hedge, fence, road, highway, water or in any visible or distinctive manner which indicates a separation from the surrounding or contiguous territory.

11. Gender and number shall be disregarded in construing this act whenever it is necessary to carry out the spirit thereof.

12. Commission, commissioners and board of commissioners are synonymous with commission of forest, fish, and game.

\* \* \* \* \*

#### Construction.

§ 142. This act is intended to be a restatement of existing law with such changes as clearly appear. The terms of office of the present commissioners are not affected thereby. References in laws not repealed to provisions in acts incorporated in this act and repealed, shall be construed as applying to such provisions in this act. Nothing in this act shall be construed as amending or repealing any provision of the criminal or penal code.

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#### ARTICLE IX.

\* \* \* \* \*

#### Powers of game protectors.

§ 173. Game protectors shall enforce all laws relating to fish and game; all laws of boards of supervisors relating to the same;

and shall have power to execute all warrants and search warrants issued for a violation of the forest, fish and game law; to serve a summons issuing from 'justices' court; to serve subpoenas issued for the examination and investigation or trial of offenses against any of said laws; to make search where they have cause to believe that fish or game is possessed in violation of law, and without search warrant to examine the contents of any boat, car, box, locker, basket, creel, crate, gamebag, or other package, and the contents of any building other than a dwelling house, to ascertain whether any of the provisions of this act or of any law for the protection of fish, shellfish, and game have been violated, and to use such force as may be necessary for the purpose of such examination and inspection; and with a search warrant to search and examine the contents of any building or dwelling house; to arrest without warrant any person committing a misdemeanor under the provisions of this act in their presence, and take such person immediately before a magistrate having jurisdiction for trial.

Thus amended by chap. 285, Laws of 1905.

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## ARTICLE X.

### **Actions for penalties by the people.**

§ 185. Actions for penalties for a violation of the fish and game provisions of this act shall be in the name of "the people of the state of New York;" and must be brought on the order of the chief game protector or of a commissioner. Special counsel may be employed and their compensation fixed by the commission. Such actions may be discontinued by order of the court on the application of the commissioner or chief game protector upon such terms as the court may direct. Such actions if in justice's courts, may be brought in any town of the county in which the penalty is incurred or of the county in which the defendant resides.

Thus amended by chap. 285, Laws of 1905.

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**Search warrants; when issued.**

§ 191. Any justice of the peace, police justice, county judge, judge of a city court or magistrate having criminal jurisdiction, shall if it appear probable that fish or game taken or possessed contrary to the provisions of this act, is concealed, issue a search warrant for the discovery thereof, according to the practice provided in sections seven hundred and ninety-four to seven hundred and ninety-seven inclusive of the code of criminal procedure.

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**ARTICLE XIII.**

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**Chief fire warden and foresters.**

§ 224-a. The commission shall appoint a chief firewarden who shall receive an annual salary of fifteen hundred dollars and his necessary traveling expenses, and who shall have supervision of town firewardens, visit and instruct them in their duties and enforce the law as to fire districts in towns and under the authority of the commission commence prosecutions for violations of laws to prevent forest fires and trespasses on the forest preserve; and may from time to time employ expert foresters. The chief and expert foresters shall hold office during the pleasure of the commission and perform such duties for the preservation of forests as the commission shall prescribe. The commissioner may also appoint five inspectors at least four of whom may during seasons of the year when forest fires occur, serve along lines of steam railroads in the forest preserve counties of the Adirondacks. They shall inspect such railroads and the engines thereon reporting to the commissioner the condition thereof for the purposes of fire prevention, and perform such other duties in preventing forest fires and protecting the forest and in reforestation as the superintendent of forests or the commissioner shall direct. They shall also have the powers of game protectors, and shall each receive an annual salary of six hundred dollars and an allowance for expenses not exceeding four hundred and fifty dollars.

Thus amended by chap. 285, Laws of 1905.

**Fire patrol.**

§ 224-b. Whenever in the judgment of the commissioner it is necessary to protect the forests from fire, he shall organize and as long as necessary maintain a fire patrol along the lines of railroads in forests in counties containing parts of the forest preserve, and at such other places in such counties as the public interest requires. Such patrol shall be organized and maintained under the chief fire warden and inspectors who shall themselves be placed in charge of sections of the exposed areas as fire patrols. Game protectors may so far as the public interest will permit, be detailed as additional assistant fire wardens for such patrol under the chief fire warden. The commissioner may also in case of immediate peril from fire with the consent of the governor, employ temporarily such additional assistants to maintain an efficient fire patrol as the public interest requires. The chief fire warden and inspectors when engaged in inspection of railroad lines and engines or on fire patrol duty on railroad lines, as herein provided, shall be transported without charge from point to point as their duties shall require, by the railroad companies on whose lines such fire patrol and inspection are maintained. The commissioner shall keep account of the cost of maintaining any such fire patrol and system of inspection along the line of a railroad in the forest preserve, including therein the salaries, expenses and wages of public officers or employees directly engaged in maintaining such patrol for the time that the said patrol and inspection are maintained, and one-half the cost thereof during the preceding year shall be paid by the railroad company on the first day of December of each year to the commissioner. The commissioner may also organize in any town in the forest preserve a fire patrol during the season when fires occur. One-half the expense thereof shall be a town charge, and one-half shall be paid by the state unless according to the last assessment roll of such town more than one-half of the landed property therein in value, is the property of the state in which case the state shall pay such a proportion of the cost of such patrol as the value of the lands held by the state bears

to the entire assessed valuation of such town, and the remainder shall be a town charge. If the state pay the whole amount the commissioner may collect the amount payable by any town of such town.

Thus amended by chap. 285, Laws of 1905.

#### **Fire wardens and fire districts.**

§ 225. The commission may from time to time in every town having lands which are part of the forest preserve, and may in every town having lands which would become part of the forest preserve if acquired by the state, appoint a fire warden who shall act during the pleasure of the commission. When required by the commission, such fire warden shall, and any such fire warden may establish two or more fire districts in his town. He may also by a written appointment filed in the town clerk's office, from time to time appoint a resident citizen in each district as district fire warden who shall act during the pleasure of the fire warden. In every other town the supervisor shall be fire warden by virtue of his office. If the supervisor be absent when fire occurs, or fails to act, any justice of the peace in the town may act as fire warden. If in a town situated in a county containing lands of the forest preserve, the commission is unable to find a suitable person who will accept the position of fire warden, then the supervisor of that town shall act as fire warden and discharge all the duties devolving on that office by law, and shall promptly make to the chief fire warden a report of each forest fire that occurs in his town.

Thus amended by chap. 590, Laws of 1904.

#### **Duties of fire wardens.**

§ 226. Under the commission a fire warden is charged with preventing and extinguishing forest fires in his town. During a season of drought a fire warden may with the approval of the commissioner, establish a fire patrol in his town. In case of fire in or threatening forest or woodland, the district fire warden, if any, or if none, the fire warden shall attend forthwith and use all necessary means to confine and extinguish the same. The

fire warden may destroy fences or plow land, or in an emergency, set backfires to check fire. Either the fire warden or a district fire warden may summon any resident of his town to assist in putting out fires. Any person summoned who is physically able and refuses to assist, shall be liable to a penalty of ten dollars. An action for trespass shall not be against persons crossing or working upon lands of another to extinguish fire. In case a forest fire burn over more than an acre of land, the fire warden of the town in which it occurs shall make a report thereof to the commission, giving the area burned over, the quantity of timber, wood, logs, bark or other forest products, and of fences, bridges and buildings destroyed with an estimate of the value thereof. He shall also report the cause of such fire and the means used in putting it out.

Thus amended by chap. 590, Laws of 1904.

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#### Railroads in forest lands.

§ 228. Every railroad company shall on such part of its road as passes through forest lands or lands subject to fires from any cause, cut and remove from its right of way along such lands at least twice a year, all grass, brush and other inflammable materials. Where the railroad runs through forest lands in counties containing part of the forest preserve, it shall so cut and remove the same from its right of way whenever required by the commissioner; employ in seasons of drought and before vegetation has revived in the spring, sufficient trackmen to promptly put out fires on its right of way; provide locomotives thereon with netting of steel or iron wire so constructed as to give the best practicable protection against the escape of fire and sparks from the smoke stacks thereof and adequate devices to prevent the escape of fire from ash pans and furnaces which shall be used on such locomotives. The railroad commission must upon the request of the forest, fish and game commissioner, and on notice to the railroad company or companies affected, require any railroad company having a railroad running through forest lands in counties containing parts of the forest preserve,

to adopt such devices and precautions against setting fire upon its line in such forest lands as the public interest requires. No railroad company or employee thereof shall deposit fire coals or ashes on its track or right of way near such lands. In case of fire on its own or neighboring lands, the railroad company shall use all practicable means to put it out. Engineers, conductors or trainmen discovering or knowing of fires in fences or other material along or near the right of way of the railroad in such lands, shall report the same at the first station to the station agent, and such station agent shall forthwith notify the nearest fire warden or game protector thereof, and use all necessary means to extinguish the same. Any railroad company failing or neglecting to comply with any of the provisions of this section, or any order of the railroad commission made pursuant to the provisions of this section, shall be liable to a penalty of one hundred dollars for each day that it continues a violation thereof, and any officer or employee of a railroad company violating any provision of this section or neglecting to comply with any requirement of the railroad commission duly ordered, shall be liable to a penalty of one hundred dollars for every such violation. The supreme court may on notice to the persons or corporations affected enforce compliance with any such order of the railroad commission.

Thus amended by chap. 590, Laws of 1904.

#### **Fires to clear land.**

§ 229. Fallows, stumps, logs, brush, dry grass or fallen timber, shall not be burned in the territory hereinafter described from April first to May thirty-first both inclusive, or from September sixteenth to November tenth both inclusive. From June first to September fifteenth both inclusive, such fires may be set therein if written permission of the fire warden or district fire warden of the town or district in which the fire is set has been first obtained. If in a locality near forest or woodland, the fire warden or district fire warden shall be personally present when the fire is started. Such fires shall not be started during a heavy

wind or without sufficient help present to control the same, and the same shall be watched by the person setting the fire until put out. Any person violating any provision of this section is guilty of a misdemeanor, and in addition thereto is liable to a penalty of three hundred dollars. This section applies to Hamilton county; to the towns of Minerva, Newcomb, North Hudson, Schroon, Keene, Jay, Lewis, North Elba, Saint Armond, and Wilmington, Essex county; the towns of Waverly, Harrietstown, Brandon, Santa Clara, Brighton, Belmont, Franklin, Duane and Altamont, Franklin county; the towns of Hopkinton, Colton, Clifton, Fine, Edwards, Pitcairn, Clare, Russell, Piercefield and Parishville of St. Lawrence county; the towns of Diana, Crogan, Watson, Greig, and Lyonsdale of Lewis county; to the towns of Webb, Wilmurt, Ohio, Salisbury and Russia, Herkimer county; the towns of Forestport and Remsen, Oneida county; the towns of Stratford, Caroga, Bleecker, and Mayfield, Fulton county; the towns of Day, Edinburg, Hadley and Corinth, Saratoga county; the towns of Johnsburgh, Thurman and Stony Creek, Warren county; the towns of Putnam, Dresden, and Fort Ann, Washington county; the towns of Altona, Dannemora, Ellenburgh, Saranac and Black Brook, Clinton county; the towns of Denning, Hardenburgh, Shandaken, Olive, Rochester, Wawarsing and Woodstock, Ulster county; the towns of Neversink and Rockland, Sullivan county; the towns of Andes, Colchester, Hancock and Middletown, Delaware county; the towns of Hunter, Jewett, Lexington and Windham, Greene county.

Thus amended by chap. 186, Laws of 1903.

### Forest fires prohibited.

§ 230. A person who wilfully or negligently sets fire to waste or forest lands of the state or of a private person, or who suffers a fire on his own lands to extend therefrom or to state lands is guilty of a misdemeanor and may be imprisoned not more than one year and be liable to pay a fine of not more than two hundred and fifty dollars or both. He shall also be liable to the state or any person for the damages caused by such wrongful act. If

state lands in the forest preserve are or have been damaged wilfully or negligently as aforesaid, an action to recover the damages shall be maintained in the name of the people of the state on the order of the commissioner by counsel designated by him, and recovery shall be had therefor. The fact that such fire may have extended to state lands by crossing one or more tracts of land intermediate the place of setting fire and the state lands, shall not bar recovery by the state when the damage done is within five miles of the place where the fire was set. This act shall not be construed to limit the recovery in cases where there are no such intervening tracts of land.

Thus amended by chap. 590, Laws of 1904.

#### Proceeds of actions for forest fires.

§ 231. Moneys received in the name of the people for violations of sections two hundred and four, two hundred and twenty-eight, two hundred and twenty-nine, and two hundred and thirty of this act, shall be paid to the commission who shall apply so much thereof as may be necessary to the payment of the expenses of collections and shall pay one-half of the balance, not exceeding in any one case fifty dollars, to the firewarden or district firewarden upon whose information the action was brought. The balance of such receipts shall be available for enforcing the various provisions of law for the protection of forests against fire.

Added by chap. 491, Laws of 1901.

### CHAP. 135, LAWS OF 1900.

AN ACT to amend section six of the code of civil procedure, in relation to a court transacting business on Sunday.

SECTION 1. Section six of the code of civil procedure is hereby amended so as to read as follows:

**Courts not to sit on Sunday, except in special cases.**

§ 6. A court shall not be opened, or transact any business on Sunday, except to receive a verdict or discharge a jury. An adjournment of a court on Saturday, unless made after a cause has been committed to a jury, must be to some other day than

Sunday. But this section does not prevent the exercise of the jurisdiction of a magistrate, where it is necessary to preserve the peace, or, in a criminal case, to arrest, commit or discharge a person charged with an offense, or the granting of an injunction order by a justice of the supreme court when in his judgment it is necessary to prevent irremediable injury or the service of a summons with or without a complaint if accompanied by an injunction order and an order of such justice permitting service on that day.

#### CHAP. 9, LAWS OF 1901.

AN ACT to create a department of labor and the office of commissioner of labor, and abolishing the offices of commissioner of labor statistics and factory inspector, and the state board of mediation and arbitration.

Department of labor and office of commissioner of labor created.

SECTION 1. A department of labor and the office of commissioner of labor are hereby created. Within twenty days after this act takes effect, the governor, by and with the advice and consent of the senate, shall appoint a commissioner of labor, who shall hold his office until January first, nineteen hundred and five. A successor to such commissioner shall be appointed in like manner and shall hold his office for a term of four years, beginning on the first day of January of the year in which he is appointed. Such commissioner shall be the head of such department and receive an annual salary of three thousand five hundred dollars.

Offices abolished; powers of \*commissioners of labor.

§ 2. The offices of commissioner of labor statistics and factory inspector, and the state board of mediation and arbitration, shall be abolished upon the appointment and qualification of such commissioner of labor. The commissioner of labor shall have the powers conferred and perform the duties imposed by law upon the commissioner of labor statistics and the factory inspector.

\*So in original.



**Deputy commissioners.**

§ 3. The commissioner of labor shall forthwith upon entering upon the duties of his office appoint and may at pleasure remove, two deputy commissioners of labor to be designated respectively as the first and second deputy commissioners of labor, each of whom shall receive an annual salary of two thousand five hundred dollars. Upon the appointment of such deputies the offices of the assistant factory inspector, deputy commissioner of labor statistics, and chief clerk of the commissioner of labor statistics are abolished.

**Bureaus of department.**

§ 4. The department of labor shall be divided by the commissioner of labor into three bureaus as follows: factory inspection, labor statistics and mediation and arbitration. The bureau of factory inspection shall be under the special charge of the first deputy commissioner of labor, who, under the supervision and direction of the commissioner of labor shall have such of the powers conferred, and perform such of the duties imposed, by law upon the factory inspector, as shall be designated by the commissioner of labor. The bureau of labor statistics shall be under the special charge of the second deputy commissioner of labor, who, subject to the supervision and direction of the commissioner of labor shall have such of the powers conferred and perform such of the duties imposed by law upon the commissioner of labor statistics, as shall be designated by the commissioner of labor. The bureau of mediation and arbitration shall be under the special charge and supervision of the commissioner of labor, who, together with the first and second deputy commissioners of labor shall constitute a board, which shall have the powers conferred, and perform the duties imposed, by law on the state board of mediation and arbitration. The powers hereby conferred upon the first and second deputy commissioners shall not include the appointment of officers, clerks or other employees in any of the bureaus of the department of labor.

**Officers and employes.**

§ 5. Except as provided by this act, the deputies, officers and employes in the office of or appointed by the factory inspector, the commissioner of labor statistics, and the state board of mediation and arbitration are continued in office until removed pursuant to law.

**Construction.**

§ 6. Wherever the terms commissioner of labor statistics, or factory inspector, occur in any law, they shall be deemed to refer to the commissioner of labor, and wherever the term state board of mediation and arbitration occurs in any law, it shall be deemed to refer to the board created by this act.

**Pending actions and proceedings.**

§ 7. This act shall not affect pending actions or proceedings, civil or criminal, brought by or against the commissioner of labor statistics or factory inspector. All proceedings and matters pending before the state board of mediation and arbitration when this act takes effect shall be continued and completed before the board hereby created; and where a grievance or dispute has been submitted to the state board of mediation and arbitration, prior to the taking effect of this act, the board hereby created may make such further investigation in relation thereto as it deems necessary.

**Repeal.**

§ 8. All acts and parts of acts inconsistent with this act are hereby repealed.

See article 10, Labor Law, chap. 415, Laws of 1897, *ante*.

**CHAP. 313, LAWS OF 1901.**

AN ACT in relation to the sale of unclaimed articles of baggage in hotels, and to amend section one of chapter three hundred of the laws of eighteen hundred and thirty-seven, entitled "An act relative to unclaimed trunks and baggage."

SECTION 1. Every hotel, inn or tavern keeper within this state who shall have any unclaimed article, goods, or thing in his

possession for a period of one year, at least, whether a receipt or check for the same may, or may not, have been given to the person or persons who left the same, may proceed to sell the same at public auction and out of the proceeds may retain the expenses of advertising the sale thereof; but, no such sale shall be made unless, in case the name and residence of the owner shall be known or ascertained, notice of such sale be sent to the owner by mail; nor shall any such sale be made until the expiration of four weeks from the publication of a notice of such sale in a newspaper published at or nearest the place at which such article, goods or thing was left and where such sale is to take place; and said notice shall contain a description of such article, goods or thing and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such article, goods or thing in a ratable proportion, according to the value of each article, package or parcel, if more than one.

§ 2. Such hotel, inn or tavern keeper shall make an entry of the balance of the proceeds of the sale, if any, of each article, goods or thing left by the same person, as near as the same can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such article, goods or thing, his heirs or assigns, on satisfactory proof of such ownership.

§ 3. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified then it shall be paid to the county treasurer for the use of the county poor of said county.

§ 4. Section one of chapter three hundred of the laws of eighteen hundred and thirty-seven, entitled "An act relative to unclaimed trunks and baggage" is hereby amended to read as follows:

§ 1. The proprietor or proprietors of the several lines of stages and the proprietors of the several canal boat lines, and the proprietors of the several steamboats, and the several incorporated railroad companies, who shall have any unclaimed trunks, boxes or baggage within his, their, or either of their custody, shall im-

mediately enter the time the same was left, with a proper description thereof, in a book to be by them provided and kept for that purpose. In case the name and residence of the owner shall be ascertained it shall be the duty of such person who shall have any such property as above specified, to immediately notify the owner thereof by mail.

See section 46, Railroad Law, and chap. 488, Laws of 1899, *ante*.

#### CHAP. 406, LAWS OF 1901.

AN ACT to amend the banking law with reference to the loaning of the available fund of a savings bank for current expenses.

SECTION 1. Section one hundred and eighteen of the banking law is hereby amended so as to read as follows:

##### **Available fund for current expenses; how loaned.**

§ 118. The trustees of every such corporation shall as soon as practicable invest the moneys deposited with them in the securities authorized by this article; but for the purpose of meeting current payments and expenses in excess of the receipts, there may be kept an available fund not exceeding ten per centum of the whole amount of deposits with such corporation, on hand or deposit in any bank in this state organized under any law of this state or of the United States, or with any trust company incorporated by any law of the state; but the sum so deposited in any one bank or trust company shall not exceed twenty-five per centum of the paid-up capital and surplus of any such bank or company; or such available fund, or any part thereof, may be loaned upon pledge of the securities or any of them named in subdivisions one, two, three, four and five of the preceding section but one, or upon the first mortgage bonds, or any of them, of the railroads mentioned and described in subdivision six of said preceding section but one, but not in excess of ninety per centum of the cash market value of such securities so pledged. Should any of the securities so held in pledge depreciate in value, after making any loan thereon, the trustees shall require the immediate payment of such loan or of a part thereof, or addi-

tional security therefor, so that the amount loaned shall at no time exceed ninety per centum of the market value of the securities pledged for the same.

See chap. 295. Laws of 1902, and chap. 401, Laws of 1905, *post*.

#### CHAP. 637, LAWS OF 1901.

AN ACT relating to the payment of a percentage of the gross receipts due to a city or village from a corporation building or operating a street surface railroad, or a branch or extension thereof.

SECTION 1. Every corporation building or operating a street surface railroad, or a branch or extension thereof, under the provisions of article four of the railroad law, or chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, which, at any time during the period of six years prior to January first, nineteen hundred and one, became liable to pay any percentage based upon the gross receipts of said corporation, under the provisions of section ninety-five of the railroad law, and which heretofore has paid or hereafter shall pay, separately or together, the amount of such percentage and, in addition thereto, interest thereon at the rate of seven percentum per annum, computed from the time such percentage became due by such section ninety-five up to the time such percentage was or shall be paid, by virtue of such payment or payments, shall be discharged of liability with the same force and effect as if the amount of such percentage had been paid upon the date when it first became due under the provisions of the said section of the said railroad law.

§ 2. All acts and parts of acts inconsistent herewith are hereby repealed.

See section 95, Railroad Law, *ante*.

**\*CHAP. 712, LAWS OF 1901.**

**AN ACT** to relieve the congestion and facilitate the traffic on the New York and Brooklyn bridge, and to improve and extend the footpaths, roadways, railway tracks and other facilities for the use of pedestrians, vehicles and railway passengers at the westerly or Manhattan terminal of said bridge.

**SECTION 1.** The commissioner of bridges of the city of New York is hereby authorized to prepare or to cause to be prepared and to submit to the board of estimate and apportionment of such city, and with the approval of said board by a majority vote thereof to adopt plans and specifications for the reconstruction of the westerly or Manhattan terminal of the New York and Brooklyn bridge, or for the construction of an extension thereof by a loop system or otherwise, or for both such construction and reconstruction, for the better accommodation of pedestrians, vehicles and railroad passengers using said bridge or terminal, which plans and specifications may also provide for the construction, maintenance and operation of railroad tracks in and upon such terminal or extension, or any part thereof, and may also provide for the location of such extension through, over or under any such streets, highways, avenues, private or public property, buildings, parks or places as said commissioner, with such approval of said board, shall determine to be the most feasible location therefor. Provided, however, that if any such extension, construction or reconstruction shall involve the appropriation or occupation of the sub-surface of any street, park or public place, or if any such extension, construction or reconstruction shall involve construction of any railroad elevated above the surface of any such street, park or public place, or any other construction, and such railroad or other construction shall in any way interfere with any rapid transit structure authorized by the board of rapid transit railroad commissioners, then in either such case the plans and specifications for any such extension, construction or reconstruction, so far as the same

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\*While this is not a general act, it is considered of enough importance to print here.

shall or may interfere with any rapid transit structure, shall require the approval also of the board of rapid transit railroad commissioners for the said city. The said commissioner is also authorized, with the approval of said board of estimate and apportionment by a majority vote thereof, to select and specify such real estate, tenements, hereditaments, corporeal or incorporeal rights in the same as such commissioner with such approval of said board shall determine to be necessary for such construction or reconstruction purposes, which are hereby declared to be public uses and purposes, and the city of New York is hereby authorized to acquire title thereto by condemnation. The said commissioner is also authorized to employ and consult with expert engineers in the preparation of and determination upon such plans, specifications and location, and to pay said engineers a reasonable compensation for such employment and consultation in the same manner as other persons employed by the said commissioner are paid.

§ 2. Upon the adoption, with the approval of said board of estimate and apportionment as aforesaid, of such plans, specifications and location, the said commissioner of bridges is hereby authorized with the approval of the said board of estimate and apportionment, by a majority vote thereof, to enter into one or more contracts in the name and on behalf of such city for the construction of any such extension or reconstruction of such terminal in accordance with such plans and specifications, and upon the location so approved and adopted. Such contracts may be made with any person or persons, corporation or corporations who or which are competent to enter into such contracts on their part, or may be made with any of the railroad corporations which have or shall have the right to operate cars across said bridge or connecting with said terminal. The said commissioner of bridges with the approval of said board of estimate and apportionment by a majority vote thereof, may also in the name and on behalf of said city enter into one or more contracts with one or more of such railroad corporations, for the operation of railroad tracks in or upon said terminal and extension and across

said bridge or any part of either thereof, upon such terms and conditions and for such periods of time as shall be provided in such contracts. Any contract hereby authorized may provide either that the expense of all construction and reconstruction authorized by this act shall be borne by the person or persons, corporation or corporations with whom or which the contract shall be made for such operation; or may, with the approval of said board of estimate and apportionment, by a majority vote thereof, provide for the payment of the whole or any part of the cost of such construction and reconstruction and the cost of any land that may be acquired therefor, by the city of New York, from the proceeds of its bonds issued for that purpose. No such contract shall grant any right to any such person or persons, corporation or corporations for a period greater than twenty-five years from and after the completion of the structure or other property for which such contract shall be made, except that there may be a provision for a renewal of the contract for a further term of twenty-five years upon the payment by the person or persons, corporation or corporations with whom or which the contract shall be made of an annual rental not less than the maximum annual rental paid during any portion of the original term of twenty-five years; nor shall any such contract be made unless it shall be therein provided that the person or persons, corporation or corporations with whom or which the contract shall be made shall annually pay to the city for the use of the extension, structure, or other property provided by the city an annual rental not less than the original amount of the interest payable by the city upon its bonds issued to provide the cost thereof, and in addition thereto an amount not less than one per centum on such cost. No such contract which authorizes or may authorize the construction of any railroad under any street, park or public place, or which authorizes or may authorize any railroad elevated above the surface of any street, park or public place which will or may interfere with any rapid transit structure already authorized by the said board of rapid transit railroad commissioners shall be so valid or binding without the approval of said board.



§ 3. All structures and construction work of every nature erected or constructed under or in pursuance of this act shall immediately upon the erection or construction of the same, or any part thereof, be and become the property of the city of New York, and together with all property acquired for the purposes of such construction or reconstruction under or in pursuance of this act shall be a part of the New York and Brooklyn bridge.

§ 4. The city of New York is hereby authorized to acquire title by deed or voluntary grant, or by condemnation, to any and all real estate, tenements, hereditaments, or corporeal or incorporeal rights in the same which the said commissioner shall from time to time with the approval of the said board of estimate and apportionment by a majority vote thereof select and determine to be necessary for such construction or reconstruction purposes, and on the determination of said commissioner, with the approval of said board of estimate and apportionment by a majority vote thereof, to take proceedings for the acquisition of the same, or any part thereof, by condemnation, the corporation counsel shall take and conduct the proceedings for acquiring such title by condemnation in the name and on behalf of the city of New York in the manner prescribed in the Greater New York charter.

§ 5. In case such construction, reconstruction, or any portion thereof, shall be made, or any such real estate, tenements, hereditaments, corporeal or incorporeal rights in the same shall be acquired, at the public expense, then and in such case, for the purpose of providing the necessary means therefor, the board of estimate and apportionment in said city, shall by a majority vote thereof, from time to time and as the same shall be necessary, and upon the requisition of the said commissioner, direct the comptroller of said city, and it shall thereupon become his duty, to issue the bonds of said city for a term not exceeding fifty years at such a rate of interest, not exceeding three and one-half per centum per annum, as said board of estimate and apportionment by a majority vote may prescribe. Said bonds shall

not be sold for less than the par value thereof, and the proceeds of the same shall be paid out and expended for the purposes for which the same are issued, upon vouchers certified by said commissioner. Said bonds shall be free from all taxation for city and county purposes, and shall be payable at maturity so far as may be out of a sinking fund to be established and created out of the payments therefor, as hereinbefore provided, or otherwise as shall be determined by said board of estimate and apportionment by a majority vote thereof. But this provision that the said bonds shall be payable out of such sinking fund or otherwise, shall not diminish or affect the obligation of said city as a debtor upon said bonds, or any other right or remedy of any holder or owner of any such bonds, to collect the principal or interest thereof.

§ 6. No street railroad shall be constructed or operated under and by virtue of this act unless the consent of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, and unless there be also obtained the consent of the owners of one-half in value of the property bounded on such portion of such street or highway, or unless in case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the first judicial department shall upon application appoint three commissioners to determine whether such railroad ought to be constructed and operated, and they shall determine, after a hearing of all parties interested, that such railroad ought to be constructed and operated, and their determination shall be confirmed by the court, which determination shall be taken in lieu of the consent of the property owners. If any part of such extension of such terminal, in accordance with such plans and specifications and upon the location so approved and adopted and authorized to be constructed and operated under and by virtue of this act, shall be a street railroad, then such portion of such extension constituting such a street railroad shall be the property of the city and a part of the New York and Brooklyn bridge and may be constructed and

operated, provided, however, and upon the condition that the consent of the local authorities having the control of, that portion of the street or highway upon which it is proposed to construct or operate any portion of such extension constituting a street railroad be first obtained, and that there be also obtained the consent in writing, acknowledged or proved as are deeds entitled to be recorded, of the owners of one-half in value of the property bounded on such portion of such street or highway; or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the first judicial department, shall upon application appoint three commissioners to determine whether such railroad ought to be constructed and operated, and they shall determine, after a hearing of all parties interested, that such railroad ought to be constructed and operated, and their determination shall be confirmed by the court, which determination shall be taken in lieu of the consent of the property owners. The value of such property bounded on such portion of such street or highway shall be ascertained and determined by the assessment roll of said city, completed last before such local authorities shall have given such consent, except property owned by such city, the value of which shall be ascertained or determined by making the value thereof to be the same as is shown by such assessment roll to be the value of the equivalent in size and frontage of the opposite property on the same street; and the said consent of the said local authorities shall operate as the consent of such city as the owner of such property. Every such consent of such local authorities expressed by resolution adopted in accordance with the ordinary and regular procedure of said local authorities shall be their complete and sufficient consent without the necessity of complying with any other conditions or requirements of any other general or special law. If the consent of property owners required by this section cannot be obtained, the said commissioner of bridges may apply to the appellate division of the supreme court in the first judicial department for the appointment of three commissioners to determine whether the portion of such extension for which

such consent is by this section required, ought to be constructed and operated. Notice of such application must, at least ten days prior thereto, be served upon each non-consenting property owner, by delivering the same to the person to whom such property is assessed upon such assessment roll, or by duly mailing the same, properly folded and directed, to such property owner at his post-office address, with the postage prepaid thereon. If the person upon whom service is to be made is unknown, or his residence and post-office address are unknown and cannot by reasonable diligence be ascertained, service of such notice may be made by publishing the same in such newspaper of the county as the court may direct, at least once a week for four successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons, who shall act as commissioners, and who shall, within ten days after their appointment, cause public notice to be given of their first meeting in the manner directed by the court, and may adjourn from time to time, until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given, and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly before such commissioners. After a public hearing of all parties interested, the commissioners so appointed shall determine whether such portion of such extension ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to the appellate division, within sixty days after their appointment, unless the court, or a judge thereof, for good cause shown, shall extend such time; and the determination of said commissioners so appointed, that such portion of such extension ought to be constructed and operated, confirmed by such court, shall be taken in lieu of the consent of the property owners hereinbefore required. The commissioners shall each receive ten dollars for each day spent in the performance of their duties and their necessary expenses and disbursements, which shall be paid by the city.

§ 7. All acts and parts of acts inconsistent with this act, so far as inconsistent herewith, are hereby repealed.

See chap. 663, Laws 1897, *ante*.

**\*CHAP. 164, LAWS OF 1902.**

AN ACT to amend chapter eighty-three of the laws of nineteen hundred and one, entitled "An act to provide for the improvement of the public highways in the county of Orange," in relation to railroad crossings and the use of such public highways after construction.

SECTION 1. Section five of chapter eighty-three of the laws of nineteen hundred and one, entitled "An act to provide for the improvement of the public highways in the county of Orange," is hereby amended to read as follows:

§ 5. Any highway or section thereof constructed or improved under this act shall be maintained by the county, and the expense thereof shall be a county charge. The supervisor of each town in which any such highway or section thereof is located, shall annually pay to the county treasurer all highway taxes collected in his town on account of property abutting on such highway or section thereof. The money so paid to the county treasurer by the supervisor of the several towns in pursuance of this section, and any additional money appropriated by the board of supervisors for such purpose shall constitute a fund for the maintenance of the highways in such county constructed under the provisions of this act and of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight. No street surface railroad shall be constructed upon any part of the highway in the county of Orange improved under this act, and chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof and supplemental thereto. If any telegraph, telephone or electric light poles are erected along such highway in such county, they shall be located in all cases at least twenty feet from the centre of the highway.

Thus amended by chap. 334, Laws of 1904.

\*While this is not a general act, it is considered of enough importance to print here.

§ 2. Section six of such act is hereby amended to read as follows:

§ 6. Whenever a public highway in the county of Orange improved under this act and chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof and supplemental thereto, crosses a railroad and a change is made in the manner of such crossing from grade to overhead or under grade crossing, or the elimination of a crossing, the board of supervisors or the sub-contractor for such improvement, may agree with the railroad corporation owning or operating such railroad upon the cost of such change and the making thereof, in which case the railroad corporation shall pay one-half thereof to the county treasurer of the county of Orange, who shall pay one-half of the amount received from such railroad corporation to the state engineer and surveyor, to be expended by him for highway improvement under the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, and the acts amendatory thereof and supplemental thereto; and the county treasurer shall credit the remaining one-half or any part thereof to the sinking fund authorized to be established by this act or to the general fund of the county, as the board of supervisors shall direct. When a highway improved under this act and chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight and the acts amendatory thereof and supplemental thereto, crosses a street surface railroad by an overhead bridge, the frame work of the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the roadway thereover and the approaches thereto, shall be maintained and kept in repair by the municipality in which the same are situated. When such a highway passes under a street surface railroad, the bridge and its abutments shall be maintained and kept in repair by the railroad company, and the subway and its approaches shall be maintained and kept in repair by the municipality in which the same are situated.

See section 62 *et seq.*, Railroad Law, *ante*; chap. 379, Laws of 1902, *post*.

**CHAP. 295, LAWS OF 1902.**

**AN ACT** to amend the personal property law, relative to investment of trust funds.

**SECTION 1.** Section nine of chapter four hundred and seventeen of the laws of eighteen hundred and ninety-seven, entitled "An act in relation to personal property, constituting chapter forty-seven of the general laws" is hereby amended to read as follows:

**Investment of trust funds.**

§ 9. An executor, administrator, guardian, trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this state are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unincumbered real property in this state worth fifty per centum more than the amount loaned thereon.

See chap. 406, Laws of 1901, *ante*; chap. 401, Laws of 1905, *post*.

**CHAP. 340, LAWS OF 1902.**

**AN ACT** to amend the canal law, relative to street railways crossing canals.

**SECTION 1.** Section twenty-five of chapter three hundred and thirty-eight of the laws of eighteen hundred and ninety-four, entitled "An act relating to canals, constituting chapter thirteen of the general laws," is hereby amended to read as follows:

**Powers with reference to railroad near the canals.**

§ 25. The superintendent of public works shall have a general supervisory power over so much of any railroad as passes over any canal or feeder belonging to the state, or approaches within ten rods thereof, so far as may be necessary to preserve the free and perfect use of such canals or feeders, or for making any repairs, improvements or alterations thereupon. No railroad corporation shall construct its railroad over or at any place within ten rods of any canal or feeder belonging to the state, unless it submits to the superintendent of public works a map,

plan and profile of such canal or feeder and of the route designated for its railroad, exhibiting distinctly and accurately the relation of each to the other at all the places within the limits of ten rods thereof, and obtain the written permission of the superintendent of public works and of the canal board for the construction of such railroad, with such conditions, directions and instructions as in his judgment the free and perfect use of any such canal or feeder may require. Whenever any street railway shall cross over any bridge spanning a canal, or canal feeder, the company owning, maintaining and operating the same shall be deemed liable for and shall pay all damages that may occur or arise, either to the state or to individuals, by reason of its laying and maintaining its tracks or rails over, upon and across any such bridge, or by reason of the operation of its cars over the same; and any such company shall upon demand of the superintendent of public works, make any repairs to such structure to insure the continued safety thereof as shall have been rendered necessary by reason of such use of said structure by said company. Any company so maintaining or operating a street railroad over, upon and across any such bridge shall indemnify the state against any and all loss, damages or claims for damage, for injuries to person or property of passengers which shall be incurred by or made against such state by reason of the operation of such railway over any such bridge, and the superintendent of public works may, in his discretion, require any company so maintaining or operating a street railway to furnish a bond, with sureties to be approved by him, to indemnify the state from all such loss, damage or claims. All such permits heretofore or hereafter granted shall be revocable whenever the free and perfect use of any such canal or feeder may so require, or if such railway company shall fail to make any such repairs when required by the superintendent of public works and the railroad company using or occupying any bridge over the same shall, within a reasonable time after the service upon it of written notice of such revocation, or to make such repairs by the superintendent of public works, remove at its own cost and expense its railroad from such bridge and from the limits of ten rods of said canal or feeder.

See section 13, Railroad Law.



## CHAP. 379, LAWS OF 1902.

AN ACT to amend chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, entitled "An act to provide for the improvement of the public highways" and the several acts amendatory thereof, regulating the construction of street surface railroads upon highways improved pursuant to the provisions of said law.

SECTION 1. Chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight, entitled "An act to provide for the improvement of the public highways" is hereby amended by adding thereto a new section to be known as section nineteen, and to read as follows:

§ 19. No street surface railroad shall be constructed upon a portion of a highway, which portion has been or may be hereafter improved under the provisions of this act and the acts amendatory thereof and supplemental thereto, except upon the consent of, and under such conditions and regulations as may be prescribed by the state engineer and surveyor.

§ 2. Section nineteen of chapter one hundred and fifteen of the laws of eighteen hundred and ninety-eight is hereby renumbered section twenty.

See the act amended and acts amendatory thereof and supplemental thereto; also section 91, Railroad Law, and chap. 164, Laws of 1902, *ante*.

## CHAP. 404, LAWS OF 1902.

AN ACT to amend section three thousand three hundred and twenty of the code of civil procedure, relative to receiver's commissions.

SECTION 1. Section thirty-three hundred and twenty of the code of civil procedure is hereby amended so as to read as follows:

Receiver's commissions; cost of bonds; trustee's commissions.

§ 3320. A receiver, except as otherwise specially prescribed by statute, is entitled, in addition to his necessary expenses, to such commissions, not exceeding five per centum upon the sums received

and disbursed by him, as the court by which, or the judge by whom, he is appointed allows. But if in any case the commissions of a temporary or permanent receiver, so computed, shall not amount to one hundred dollars, said court or judge may, in its or his discretion, allow said receiver such a sum, not exceeding one hundred dollars, for his commissions as shall be commensurate with the services rendered by said receiver. Any receiver, assignee, guardian, trustee, committee, executor, administrator or person appointed under section ninety-one of the real property law or under section eight of the personal property law required by law to give a bond as such may include as a part of his necessary expenses, such reasonable sum, not exceeding one per centum per annum upon the amount of such bond paid his surety thereon, as such court or judge allows. A trustee of an express trust is entitled, and two or more trustees of such a trust are entitled, to be apportioned between or among them according to the services rendered by them respectively, as compensation for services as such, over and above expenses, to commissions as follows: For receiving and paying out all sums of principal not exceeding one thousand dollars, at the rate of five per centum. For receiving and paying out any additional sums of principal not exceeding ten thousand dollars, at the rate of two and one-half per centum. For receiving and paying out all sums of principal above eleven thousand dollars, at the rate of one per centum. And for receiving and paying out income in each year, at the like rates. In all cases a just and reasonable allowance must be made for the necessary expenses actually paid by such trustee or trustees. If the value of the principal of the trust estate or fund equals or exceeds one hundred thousand dollars, each such trustee is entitled to the full commission on principal, and on income for each year, to which a sole trustee is entitled, unless the trustees are more than three, in which case three full commissions at the rates aforesaid must be apportioned between or among them according to the services rendered by them respectively. If the instrument creating the trust provides specific compensation for the services of the trustee or trustees, no other compensation for such services shall

be allowed unless the trustee or trustees shall, before receiving any compensation for such services, by a written instrument duly acknowledged, renounce such specific compensation.

Thus amended by chap. 755, Laws of 1904, taking effect Sept. 1, 1904.

See chap. 378, Laws 1883; chap. 285, Laws 1884; chap. 310, Laws 1886; chap. 522, Laws 1898; chap. 534, Laws 1898, and sections 5, Stock Corporation Law, and 76, Railroad Law, *ante*.

#### CHAP. 600, LAWS OF 1902.

AN ACT to extend and regulate the liability of employers to make compensation for personal injuries suffered by employees.

SECTION 1. Where, after this act takes effect, personal injury is caused to an employee who is himself in the exercise of due care and diligence at the time:

1. By reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition;

2. By reason of the negligence of any person in the service of the employer entrusted with and exercising superintendence whose sole or principal duty is that of superintendence, or in the absence of such superintendent, of any person acting as superintendent with the authority or consent of such employer; the employee, or in case the injury results in death, the executor or administrator of a deceased employee who has left him surviving a husband, wife or next of kin, shall have the same right of compensation and remedies against the employer as if the employee had not been an employee of nor in the service of the employer nor engaged in his work. The provisions of law relating to actions for causing death by negligence, so far as the same are consistent with this act, shall apply to an action brought by an executor or administrator of a deceased employee suing under the provisions of this act.

§ 2. No action for recovery of compensation for injury or death under this act shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and twenty days and the action is commenced within one year after the occurrence of the accident causing the injury or death. The notice required by this section shall be in writing and signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in said section, he may give the same within ten days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator may give such notice within sixty days after his appointment, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury if it be shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. The notice required by this section shall be served on the employer or if there is more than one employer, upon one of such employers, and may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice may be served by post by letter addressed to the person on whom it is to be served, at his last known place of residence or place of business and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation, notice shall be served by delivering the same or by sending it by post addressed to the office or principal place of business of such corporation.

§ 3. An employee by entering upon or continuing in the service of the employer shall be presumed to have assented to the necessary risks of the occupation or employment and no others. The necessary risks of the occupation or employment shall, in all cases arising after this act takes effect be considered as including those risks, and those only, inherent in the nature of the business

which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees. In an action maintained for the recovery of damages for personal injuries to an employee received after this act takes effect, owing to any cause for which the employer would otherwise be liable, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of, the danger of personal injury therefrom, shall not, as a matter of law, be considered as an assent by such employee to the existence or continuance of such risks of personal injury therefrom, or as negligence contributing to such injury. The question whether the employee understood and assumed the risk of such injury, or was guilty of contributory negligence, by his continuance in the same place and course of employment with knowledge of the risk of injury shall be one of fact, subject to the usual powers of the court in a proper case to set aside a verdict rendered contrary to the evidence. An employee, or his legal representative, shall not be entitled under this act to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury and failed, within a reasonable time, to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who had intrusted to him some general superintendence, unless it shall appear on the trial that such defect or negligence was known to such employer, or superior person, prior to such injuries to the employee.

§ 4. An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries, for which compensation may be recovered under this act, or to any relief society or benefit fund created under the laws of this state, may prove in mitigation of damages recoverable by an employee under

this act such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

§ 5. Every existing right of action for negligence or to recover damages for injuries resulting in death is continued and nothing in this act contained shall be construed as limiting any such right of action, nor shall the failure to give the notice provided for in section two of this act be a bar to the maintenance of a suit upon any such existing right of action.

#### CHAP. 30, LAWS OF 1903.

AN ACT in relation to the consolidation of domestic and foreign railroad corporations.

SECTION 1. The consolidation heretofore effected of a domestic railroad corporation with a foreign railroad corporation, shall not be deemed invalid because such roads at the time of the consolidation did not form a connected and continuous line, if, when the consolidation was effected, or thereafter, an intermediate line, by purchase or by a lease, of not less than ninety-nine years became, with the consolidated roads, a continuous and connecting line of railroad.

See section 70, *et seq.*, Railroad Law, chap. 193, Laws of 1897, and chap. 201, Laws of 1899, *ante*.

#### CHAP. 175, LAWS OF 1903.

AN ACT to amend subdivision nineteen of section fourteen of title seven of the consolidated school law as amended by section five of chapter two hundred and sixty-four of the laws of eighteen hundred and ninety-six relating to the conveying of school children.

SECTION 1. Subdivision nineteen of section fourteen of title seven of the consolidated school law as amended by section five of chapter two hundred sixty-four of the laws of eighteen hundred ninety-six is hereby amended to read as follows:

19. Whenever any district shall have contracted with the school authorities of any city, village or other school district for the education therein of the pupils residing in such school district, or whenever in any school district children of school age shall reside so remote from the schoolhouse therein that they are practically deprived of school advantages during any portion of the school year, the inhabitants thereof entitled to vote are authorized to provide, by tax or otherwise, for the conveyance of any or all pupils residing therein to the schools of such city, village or district with which such contract shall have been made, or to the school maintained in said district, and the trustees thereof may contract for such conveyance when so authorized in accordance with such rules and regulations as they may establish, and for the purpose of defraying any expense incurred in carrying out the provisions of this act, they may if necessary use any portion of the public money apportioned to such district as a district quota.

#### CHAP. 308, LAWS OF 1903.

AN ACT to regulate the junk business, and to require a person engaging in such business to procure a license.

SECTION 1. On and after July first, nineteen hundred and three, it shall be unlawful for any person, association, copartnership or corporation to engage or continue in the business of buying or selling old metal, which business is herein designated junk business, and which person, association, copartnership or corporation is herein designated junk dealer, unless such junk dealer shall have complied with the provisions of this act and obtained a license so to do from the mayor of the city, if the principal place of business of such junk dealer is in a city, or the president of the village if such place of business is in an incorporated village, otherwise from the supervisor of the town in which such place of business is located; for which license shall be paid such mayor, president or supervisor for the use of such city, village or town, the sum of five dollars, which license shall expire on June thirtieth of each year.

§ 2. No person, association, copartnership or corporation shall be entitled to nor receive such license who or which, and in case of a copartnership or association any member of which, has been since January first, nineteen hundred and three, or who or which shall hereafter be convicted of larceny or knowingly receiving stolen property, or of a violation of this act.

§ 3. On purchasing any pig or pigs of metal, copper wire or brass car journals, such junk dealer shall cause to be subscribed by the person from whom purchased a statement as to when, where and from whom he obtained such property, also his age, residence by city, village or town, and the street and number thereof, if any, and otherwise such description as will reasonably locate the same, his occupation and name of his employer and place of employment or business, which statement the junk dealer shall forthwith file in the office of the chief of police of the city or village in which the purchase was made, if made in a city or incorporated village, and otherwise in the office of the sheriff of the county in which made.

§ 4. Every junk dealer shall on purchasing any of the property described in the last section place and keep each separate purchase in a separate and distinct pile, bundle or package, in the usual place of business of such junk dealer, without removing, melting, cutting or destroying any article thereof, for a period of five days immediately succeeding such purchase, on which package, bundle or pile shall be placed and kept by such dealer a tag bearing the name and residence of the seller, with the date, hour and place of purchase, and the weight thereof.

§ 5. Each violation of this act, either by the junk dealer, the agent or servant thereof, and each false statement made in or on any statement or tag above mentioned shall be a misdemeanor. But nothing herein contained shall apply to cities of the first class.

See sections 290, 550 of Penal Code, *post*.



**\*CHAP. 462. LAWS OF 1903.**

**AN ACT** to except certain street opening proceedings in the county of Kings from the provisions of the railroad law, relating to grade crossings, and to legalize the appointment of commissioners in said proceedings.

**SECTION 1.** The proceedings now pending in the county of Kings in which commissioners of estimate and assessment have already been appointed for the purpose of acquiring title for street purposes to the lands and premises required for the opening of Eleventh avenue from Fifty-ninth street to Eighty-third street, East Fortieth street from Avenue H to Flatlands avenue, Eighth avenue from Fiftieth street to Seventh avenue, East Nineteenth street from Avenue M to Foster avenue, Ninth avenue from Thirty-seventh street to Bay Ridge avenue, Sixth avenue from Sixtieth street to Fort Hamilton avenue, Sixty-second street from Tenth avenue to Sixth avenue, Seventeenth avenue from the Flatbush line to Bath avenue, Tenth avenue from Thirty-eighth street to Fifty-third street, and from Seventh avenue to Fort Hamilton avenue, Dumont avenue from East Ninety-eighth street to New Lots avenue, Forty-ninth street from the former city line to West street, Sixteenth avenue from Flatbush avenue to Eighty-fourth street, Foster avenue from Flatbush avenue to Coney Island avenue, Eighty-fifty street from Narrows avenue to Stillwell avenue, Forty-fifth street from the old city line to West street, Fifty-second street from the old city line to the old road leading to New Utrecht, Fifty-third street from the old city line to West street, and Sixty-second street from Tenth avenue to Sixth avenue, are hereby excepted from the provisions of sections sixty-one and sixty-nine of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, as amended by chapter seven hundred and fifty-four of the laws of eighteen hundred and ninety-seven relating to railroad crossings; and the appointment of commissioners of estimate and assessment in such proceedings is hereby legalized, ratified and confirmed; pro-

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\*While this is not a general act, it is printed here as it refers to section 61, Railroad Law.

vided, however, that no crossing shall be actually established or constructed over any railroad crossed by any street or avenue opened in any such proceeding, until a crossing shall be allowed and established by the railroad commissioners as provided by section sixty-one of the railroad law.

See section 61, Railroad Law, *ante*.

#### CHAP. 597, LAWS OF 1903.

AN ACT to amend chapter seven hundred of the laws of eighteen hundred and ninety-five, entitled "An act to extend the time of commencement or construction or completion of railroads other than street surface railroads," in relation to the extension of time for such commencement or completion.

SECTION 1. Chapter seven hundred of the laws of eighteen hundred and ninety-five, entitled "An act to extend the time for commencement or construction or completion of railroads, other than street surface railroads," as amended by chapter six hundred and forty-seven of the laws of eighteen hundred and ninety-nine, and as further amended by chapter six hundred and seventeen of the laws of nineteen hundred and one, and as further amended by chapter four hundred and eighty-seven of the laws of nineteen hundred and two, is hereby amended to read as follows:

§ 1. The time or times prescribed for the commencement of the construction or the completion of its railroads,\* or any other portions thereof, by any railroad company existing at the time herein mentioned, which has at said time acquired at least one-third of its right of way or begun the construction of any portion of its railroads, or shall have heretofore obtained a certificate from the board of railroad commissioners that public convenience required the construction of said railroads, is hereby extended three years from the first day of January, nineteen hundred and four.

See chap. 263, and chap. 495, Laws of 1898, and sections 5, 59, 59-a, 59-b, 99, 106, 124, Railroad Law, *ante*. and acts which this act amends; also chap. 626, Laws of 1903, *post*.

\*So in original.

## CHAP. 626, LAWS OF 1903.

AN ACT to suspend the limitation of time for commencement of construction or the completion of railroads while in the hands of receivers.

SECTION 1. In every case where a receiver of the property or franchises of a domestic railroad corporation has been heretofore appointed by a court of this state or by a court of the United States having jurisdiction within the limits of this state, the time intervening between the entry of the order, judgment or decree appointing a receiver in the first instance and the entry of the order, judgment or decree finally terminating the receivership, shall not be nor be taken to be part of the time limited by law for beginning the construction of its road by such railroad corporation, or for the expenditure by it of ten per centum on the amount of its capital stock on such construction, or for finishing its road or putting it in operation, and the expiration heretofore or hereafter during such receivership of the time so limited shall not be taken to have terminated or in any way to have affected the existence, franchises, rights or privileges of said corporation; but such corporation shall have all rights, privileges, powers and franchises to which if a valid corporation it would have been entitled by law at the time of filing its certificate of incorporation, together with such rights, privileges, powers and franchises as have since been or may hereafter be granted by law to such corporations; provided that nothing herein contained shall in any way alter, affect or impair any vested right or interest. And such corporation, or in case of a sale of its franchise by the court, then the successor corporation acquiring the franchise, shall be entitled to the same period of time for the performance of said acts and things after the termination of receivership, as remained to said corporation at the time of entry of the order, judgment or decree appointing the receiver in the first instance. This act as here amended shall not apply to nor affect any street surface railroad company the

route of which in whole or in part lies within any city of the first or second class in this state, and shall not apply to nor affect any railroad corporation incorporated under any private or local bill or act.

See chap. 263, and chap. 495, Laws of 1898, sections 5, 59, 59-a, 59-b, 99, 106, 124, Railroad Law; also chap. 597, Laws of 1903, *ante*.

### CHAP. 232, LAWS OF 1904.

AN ACT relating to commissioners of jurors for each county of the state having a certain population and regulating and prescribing his duties and also providing in what manner juries shall be made up and jurors drawn in courts of record in such counties; how they may be exempted or excused and the length of service of such jurors.

SECTION 1. The selection and summoning of grand and trial jurors in the counties of this state having a population of over one hundred and eighty thousand, according to the last preceding United States enumeration of inhabitants shall be performed by a person to be appointed by a board which shall consist of the county judge, sheriff, district attorney and county treasurer of such county, who shall be known as the commissioner of jurors of such county and who shall hold his office for four years from the second Monday of May in the year of his appointment. But in case this act shall in the future apply to any county not now affected by the United States enumeration, determining that it has the requisite population, it shall not affect the term of the office of the commissioner of jurors, in a county wherein a commissioner of jurors has been appointed under the provisions of this act.

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#### § 10.

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Either of the following persons, although qualified are entitled to an exemption from service as a grand or trial juror upon his claiming an exemption.

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9. A superintendent, conductor or engineer employed by a railroad company other than a street railway company or a telegraph operator employed by a telegraph company who is actually doing duty in an office or along the railroad or telegraph line of the company by which he is employed.

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§ 36. Nothing in this act contained shall affect any legal action or proceeding now pending.

§ 37. The counties of Albany, Erie, Kings, Monroe and New York are hereby excepted from the operation of this act.

§ 38. All acts and parts of acts inconsistent with this act are hereby repealed.

See other statutes, not printed herein, as to exemption of railroad employees from jury duty.

#### CHAP. 538, LAWS OF 1904.

AN ACT in relation to the registration and identification of motor vehicles and the use of the public highways by such vehicles.

##### Short title.

SECTION 1. Subdivision 1. The short title of this act shall be the "motor vehicle law." Except as otherwise herein provided, it shall be controlling, (1) upon the registration and numbering of motor vehicles and chauffeurs, (2) on their use of the public highways, and (3) on the penalties for the violation of any of the provisions of this act.

##### Definitions.

Subdivision 2. The words and phrases used in this act shall, for the purposes of this act, unless the same be contrary to or inconsistent with the context, be construed as follows: (1) "motor vehicle" shall include all vehicles propelled by any power other than muscular power, excepting such motor vehicles as run only upon rails or tracks, provided that nothing herein contained shall, except as provided by subdivision four of section three of this act, apply to motor cycles, motor bicycles, traction engines or road rollers; (2) "public highways" shall include any highway, county road, state road, public street, avenue, alley, park, parkway, driveway or public place in any city,

village or town; (3) "closely built up" shall mean, (a) the territory of a city, village or town contiguous to a public highway which is at that point built up with structures devoted to business, (b) the territory of a city, village or town contiguous to a public highway not devoted to business, where for not less than one-quarter of a mile the dwelling houses on such highway average less than one hundred feet apart, and also (c) the territory outside of a city or village contiguous to a public highway within a distance of one-half mile from any postoffice, provided that for a distance of at least one-quarter of a mile within such limits the dwelling houses on such highway average less than one hundred feet apart, and provided further that the local authorities having charge of such highway shall have placed conspicuously thereon signs of sufficient size to be easily readable by a person using the highway, bearing the words "Slow down to ten miles," and also an arrow pointing in the direction where the speed is to be reduced; (4) "local authorities" shall include all officers of counties, boroughs, cities, villages or towns, as well as all boards, committees and other public officials of such counties, boroughs, cities, villages or towns; (5) "chauffeur" shall mean any person operating a motor vehicle as mechanic, employee or for hire.

#### Filing statement.

§ 2. Subdivision 1. Every person hereafter acquiring a motor vehicle shall, for every vehicle owned by him, file in the office of the secretary of state a statement of his name and address, with a brief description of the vehicle to be registered, including the name of the maker, factory number, style of vehicle and motor power, on a blank to be prepared and furnished by such secretary for that purpose; the filing fee shall be two dollars.

#### Registration and record.

Subdivision 2. The secretary of state shall thereupon file such statement in his office, register such motor vehicle in a book or index to be kept for that purpose, and assign it a distinctive number.

**Registration seal.**

Subdivision 3. The secretary of state shall forthwith on such registration, and without other fee, issue and deliver to the owner of such motor vehicle a seal of aluminum or other suitable metal, which shall be circular in form, approximately two inches in diameter, and have stamped thereon the words "Registered motor vehicle, No. —, New York motor vehicle law," with the registration number inserted therein; which seal shall thereafter at all times be conspicuously displayed on the motor vehicle, to which such number has been assigned.

**Owners previously registered.**

Subdivision 4. If the vehicle has been previously registered, the certificate issued thereon shall be returned to the secretary of state and in lieu thereof such secretary shall issue to said owner a registration seal containing the number of such previous registration, upon payment of a fee of one dollar. Upon the sale of a motor vehicle, the vendor, except a manufacturer or dealer, shall, within ten days, return to the secretary of state the registration seal affixed to such vehicle.

**Display of registration number.**

Subdivision 5. Every motor vehicle shall also at all times have the number assigned to it by the secretary of state displayed on the back of such vehicle in such manner as to be plainly visible, the numbers to be in Arabic numerals, black on white ground, each not less than three inches in height, and each stroke to be of a width not less than half an inch, and also as a part of such number the initial letters of the state in black on white ground, such letters to be not less than one inch in height.

**Registration by manufacturers or dealers.**

Subdivision 6. A manufacturer of or dealer in motor vehicles shall register one vehicle of each style or type

manufactured or dealt in by him, and be entitled to as many duplicate registration seals for each type or style so manufactured or dealt in as he may desire on payment of an additional fee of fifty cents for each duplicate seal. If a registration seal and the corresponding number shall thereafter be affixed to and displayed on every vehicle of such type or style as in this section provided, while such vehicle is being operated on the public highways, it shall be deemed a sufficient compliance with subdivisions one, three, five and eight of this section, until such vehicle shall be sold or let for hire. Nothing in this subdivision shall be construed to apply to a motor vehicle employed by a manufacturer or dealer for private use or for hire.

#### Fictitious seal or number.

Subdivision 7. No motor vehicle shall be used or operated upon the public highways after thirty days after this act takes effect which shall display thereon a registration seal or number belonging to any other vehicle, or a fictitious registration seal or number.

#### Unregistered vehicle not to be operated.

Subdivision 8. No motor vehicle shall be used or operated upon the public highways after thirty days after this act takes effect, unless the owner shall have complied in all respects with this section, except that any person purchasing a motor vehicle from a manufacturer, dealer or other person after this act goes into effect shall be allowed to operate such motor vehicle upon the public highways for a period of five days after the purchase and delivery thereof, provided that during such period such motor vehicle shall bear the registration number and seal of the previous owner under which it was operated or might have been operated by him.

#### Exemption of nonresident owners.

Subdivision 9. The provisions of this section shall not apply to motor vehicles owned by nonresidents of this state, provided the



owners thereof have complied with any law requiring the registration of owners of motor vehicles in force in the state, territory or federal district of their residence, and the registration number showing the initial of such state, territory or federal district shall be displayed on such vehicle substantially as in this section provided.

#### **Speed permitted.**

§ 3. Subdivision 1. No person shall operate a motor vehicle on a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person, or the safety of any property; or in any event on any public highway where the territory contiguous thereto is closely built up, at a greater rate than one mile in six minutes, or elsewhere in a city or village at a greater rate than one mile in four minutes, or elsewhere outside of a city or village at a greater rate than one mile in three minutes; subject, however, to the other provisions of this act.

#### **Speed at crossings, et cetera.**

Subdivision 2. Upon approaching a bridge, dam, sharp curve, or steep descent, and also in traversing such bridge, dam, curve or descent, a person operating a motor vehicle shall have it under control and operate it at a rate of speed not exceeding one mile in fifteen minutes, and upon approaching a crossing of intersecting highways at a speed not greater than is reasonable and proper, having regard to the traffic then on such highway and the safety of the public.

#### **Meeting horses, et cetera.**

Subdivision 3. Upon approaching a person walking in the roadway of a public highway, or a horse or horses, or other draft animals, being ridden, led or driven thereon, a person operating a motor vehicle shall give reasonable warning of its approach,

and use every reasonable precaution to ensure the safety of such person or animal, and, in the case of horses or other draft animals, to prevent frightening the same.

#### **Stopping on signal.**

Subdivision 4. A person operating a motor vehicle or motor cycle or motor bicycle shall, at request or on signal by putting up the hand, from a person riding, leading or driving a restive horse or horses or other draft animals, bring such motor vehicle, cycle or bicycle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such horse or animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided that, in case such horse or animal appears badly frightened or the person operating such motor vehicle is requested so to do, such person shall cause the motor of such vehicle, cycle or bicycle to cease running so long as shall be reasonably necessary to prevent accident and insure the safety of others.

#### **Giving name and address.**

Subdivision 5. In case of accident to a person or property on the public highways, due to the operation thereon of a motor vehicle, the person operating such vehicle, shall stop, and, upon request of a person injured, or any person present, give such person his name and address, and, if not the owner, the name and address of such owner.

#### **Speed tests and races.**

Subdivision 6. Local authorities may, notwithstanding the other provisions of this section, set aside for a given time a specified public highway for speed tests or races, to be conducted under proper restrictions for the safety of the public.

#### **Rules of the road.**

§ 4. Subdivision 1. Whenever a person operating a motor vehicle shall meet on a public highway any other person riding

or driving a horse or horses or other draft animals, or any other vehicle, the person so operating such motor vehicle shall seasonably turn the same to the right of the center of such highway so as to pass without interference. Any such person so operating a motor vehicle shall, on overtaking any such horse, draft animal or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal or other vehicle shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any such person so operating a motor vehicle shall at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right and pass to the right of such intersection when turning to the left. Nothing in this subdivision shall, however, be construed as limiting the meaning or effect of the provisions of section three of this act.

#### **Brakes, lamps, horn, et cetera.**

Subdivision 2. Every motor vehicle while in use on a public highway shall be provided with good and efficient brakes, and also with a suitable bell, horn or other signal and be so constructed as to exhibit, during the period from one hour after sunset to one hour before sunrise, two lamps showing white lights visible within a reasonable distance in the direction toward which such vehicle is proceeding, showing the registered number of the vehicle in separate Arabic numerals, not less than one inch in height and each stroke to be not less than one-quarter of an inch in width, and also a red light visible in the reverse direction.

#### **Local ordinances prohibited.**

Subdivision 3. Subject to the provisions of this act, local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring of any owner or operator of a motor vehicle any license or permit to use the public highways, or excluding or prohibiting any motor vehicle whose owner has complied with section two of this act from the free

use of such highways, except such driveway, speedway or road as has been or may be expressly set apart by law for the exclusive use of horses and light carriages, or except as herein provided, in any way affecting the registration or numbering of motor vehicles or prescribing a slower rate of speed than herein specified at which such vehicles may be operated, or the use of the public highways, contrary to or inconsistent with the provisions of this act; and all such ordinances, rules or regulations now in force are hereby declared to be of no validity or effect; provided, however, that the local authorities of cities and incorporated villages may limit by ordinance, rule or regulation hereafter adopted the speed of motor vehicles on the public highways, on condition that such ordinance, rule or regulation shall also fix the same speed limitation for all other vehicles, such speed limitation not to be in any case less than one mile in six minutes in incorporated villages, and on further condition that such city or village shall also have placed conspicuously on each main public highway where the city or village line crosses the same and on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highway, bearing the words "Slow down to — miles" (the rate being inserted) and also an arrow pointing in the direction where the speed is to be reduced or changed, and also on further condition that such ordinance, rule or regulation shall fix the penalties for violation thereof similar to and no greater than those fixed by such local authorities for violations of speed limitation by any other vehicles than motor vehicles, which penalties shall during the existence of the ordinance, rule or regulation supersede those specified in section six of this act, and provided further, that nothing in this act contained shall be construed as limiting the power of local authorities to make, enforce and maintain, further ordinances, rules or regulations, affecting motor vehicles which are offered to the public for hire.

**Parks, parkways and cemeteries excepted.**

Subdivision 4. Local authorities may, notwithstanding the provisions of this act, make, enforce and maintain such reasonable ordinances, rules or regulations concerning the speed at which motor vehicles may be operated in any parks or parkways within a city but, in that event, must, by signs at each entrance of such park and along such parkway, conspicuously indicate the rate of speed permitted or required, and may exclude motor vehicles from any cemetery or grounds used for the burial of the dead.

**No effect on right to damages.**

Subdivision 5. Nothing in this act shall be construed to curtail or abridge the right of any person to prosecute a civil action for damages by reason of injuries to person or property resulting from the negligent use of the highways by a motor vehicle or its owner or his employee or agent.

**Filing chauffeur's statement.**

§ 5. Subdivision 1. Every person hereafter desiring to operate a motor vehicle as a chauffeur shall file in the office of the secretary of state, on a blank to be supplied by such secretary, a statement which shall include his name and address and the trade name and motive power of the motor vehicle or vehicles he is able to operate; and shall pay a registration fee of two dollars.

**Chauffeur's registration and record.**

Subdivision 2. The secretary of state shall thereupon file such statement in his office, register such chauffeur in a book or index to be kept for that purpose, and assign him a number.

**Chauffeur's badge.**

Subdivision 3. The secretary of state shall forthwith, upon such registration and without other fee, issue and deliver to such chauffeur a badge of aluminum or other suitable metal, which shall be oval in form, and the greater diameter of which shall

not be more than two inches, and such badge shall have stamped thereon the words: "Registered chauffeur, No. —, New York motor vehicle law," with the registration number inserted therein; which badge shall thereafter be worn by such chauffeur pinned upon his clothing in a conspicuous place at all times while he is operating a motor vehicle upon the public highways. If the operator or chauffeur has previously been registered in the office of the secretary of state, the certificate heretofore issued to him, shall be returned to such secretary, who shall issue to said operator or chauffeur, in lieu thereof, a chauffeur's badge upon the payment of a fee of one dollar.

#### **Fictitious badge.**

Subdivision 4. No chauffeur, having registered as hereinabove provided, shall voluntarily permit any other person to wear his badge, nor shall any person while operating a motor vehicle wear any badge belonging to another person, or a fictitious badge.

#### **Unregistered chauffeur cannot operate.**

Subdivision 5. No person shall operate a motor vehicle as a chauffeur upon the public highways after thirty days after this act takes effect, unless such person shall have complied in all respects with the requirements of this section.

#### **Penalties for excessive speed, et cetera.**

§ 6. Subdivision 1. The violation of any of the provisions of subdivision five of section two, or of subdivision seven of section two, or of section three, or of section five of this act, or of any ordinance, rule or regulation adopted by local authorities in pursuance of subdivision four of section four of this act, shall be deemed a misdemeanor, punishable by a fine not exceeding one hundred dollars for the first offense, and punishable by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment not exceeding thirty days, or both, for a second offense, and punishable by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars and imprisonment not exceeding thirty days for a third or subsequent offense.

**Penalties for other violations.**

Subdivision 2. The violation of any other provision of this act shall be punished by a fine not exceeding twenty-five dollars for the first offense, a fine not less than twenty-five dollars nor more than fifty dollars for a second offense, and a fine not less than fifty dollars nor more than one hundred dollars, or imprisonment not exceeding ten days, or both, for a third or subsequent offense.

**Release from custody, bail, et cetera.**

Subdivision 3. In case the owner of a motor vehicle shall be taken into custody because of a violation of any provision of this act, he shall be forthwith taken before an accessible captain or sergeant or acting sergeant of police in any city or village, or any justice of the peace or magistrate, and be entitled to an immediate hearing; and if such hearing cannot then be had, be released from custody on giving his personal undertaking to appear in answer for such violation, at such time and place as shall then be indicated, secured by the deposit of a sum equal to the maximum fine for the offense with which he is charged, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer; or, in case such officer is not accessible, be forthwith released from custody on giving his name and address to the officer making such arrest, and depositing with such officer a sum equal to the maximum fine for the offense for which such arrest is made, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer, provided, that in such case the officer making such arrest shall give a receipt in writing for such sum or vehicle and notify such person to appear before the most accessible magistrate, naming him, on that or the following day, specifying the place and hour. In case security shall be deposited, as in this subdivision provided, it shall be returned to the person depositing, forthwith on such person being admitted to bail as provided in section five hundred and fifty-four of the code of criminal procedure, and the return of any receipt or other voucher given at the time of such de-

posit. In case such undertaking with security or such deposit shall not be made by an owner so taken into custody, the provisions of section five hundred and fifty-four of the code of criminal procedure shall apply.

#### Acts repealed.

§ 7. All acts and parts of acts inconsistent herewith or contrary hereto are, so far as they are inconsistent or contrary, hereby repealed.

#### When this act takes effect.

§ 8. This act shall take effect immediately, except that no penalty shall be asserted or imposed for the violation of any of the provisions of section two or section five hereof committed prior to thirty days after this act takes effect.

¶ See sections 1458-1461, Greater New York Charter, section 23 Transportation Corporation Law, section 163 Highway Law, *ante*; section 666 Penal Code, *post*.

### CHAP. 734, LAWS OF 1904.

AN ACT to establish a permanent commission for the regulation of the flow of water courses in this state in aid of the public health and safety, to be known as the river improvement commission.

SECTION 1. After the passage of this act the state engineer and surveyor, the attorney-general, the superintendent of public works, the forest, fish and game commissioner, and one commissioner who shall be a civil engineer, to be appointed by the governor by and with the advice and consent of the senate, shall constitute a commission to be known as the river improvement commission.

§ 2. Any county, city, town or village located upon any river or water course, or any person or persons possessing riparian rights thereon, may present to the commission, a petition duly verified, setting forth the facts showing that the restricted or unrestricted flow thereof is a menace to the public health and safety and that it is necessary to the preservation of the public health



and safety to regulate the same, and praying that the flow of water in such river or water course shall be regulated under the provisions of this act, so far as necessary for that purpose. Such petition may be made on behalf of any county by the board of supervisors thereof, on behalf of any town by the supervisor thereof, on behalf of any city by the mayor or board of aldermen thereof, on behalf of any village by the president or board of trustees thereof.

§ 3. Such commission on receipt of any such petition shall forthwith determine whether the regulation of the flow of any such river or water course is of sufficient importance to the public health or safety to warrant the interference of the state under the provisions of this act, and shall certify its determination thereupon. If it shall determine that the relief prayed for should be granted, such commission shall at once make or cause to be made such preliminary surveys and investigations as may be proper to determine the causes of the excessive, restricted or irregular flow in such river or water course, the available means to correct the same for the preservation of the public health and safety, and if relief therefrom is in the opinion of the commission practicable, to take such other and further action with reference to relieving the same as is hereinafter provided for.

§ 4. If such commission shall determine that a more beneficial flow of water in such river or water course can be had by construction of dykes, clearing out or changing the channel, the erection of a dam or dams or other public works thereon, or upon any tributary thereof, it shall cause to be made preliminary plans and specifications of such proposed improvements, together with a survey of the lands upon which such improvements are to be located, giving the location thereof, and of all lands to be taken, flowed or damaged thereby, with a description by survey or otherwise, of all rights affected thereby, and estimates of the total cost thereof. The commission shall also cause a map to be made showing all such lands, the number of acres in each separate tract and the names of the owners and occupants thereof so far

as the said commission can ascertain the same. The commission or the members thereof may enter upon such lands as the commission shall deem necessary for the purpose of doing such work, either by themselves or by their engineers, agents or servants employed by them for that purpose. The commission shall also prepare a statement or list of the counties, towns, cities, villages and individual properties which in its judgment will be benefited thereby, together with a statement of the proportional share of said total cost which should be borne by the said counties, towns, cities and villages respectively, and by the individual owners of property benefited collectively, expressed in decimals; and in case any part or proportion of the cost of such improvement is not properly assessable upon the counties, towns, cities, villages or individual properties, or any of them, as not in the nature of a local improvement, such part or proportion of the expense shall be deducted from the total cost before apportioning the same upon the counties, towns, cities, villages and individual properties as aforesaid, and shall be certified by the said commission to the legislature as a state charge. Said preliminary maps, plans, specifications, estimates and statements shall thereupon be filed in the office of the county clerk of any county benefited and of each county in which any of the aforesaid towns, cities, villages or individual properties benefited are situated. Upon the completion and filing of such preliminary maps, plans, specifications, estimates and statements, the commission shall give notice of the filing thereof, and of the time and place where said commission will give a hearing to persons interested therein, by advertising for five weeks in two newspapers published in each county where such improvement is proposed to be made, and in the state paper published at Albany, at which time and place any person interested may appear, and make any objection to or suggest any modifications in said plans and specifications, and said commission shall have power to adjourn said hearing from time to time as justice may require. Thereupon said commission shall determine whether such proposed improvement shall be abandoned or proceeded with, and what, if any, modifications should be made

in said plans, specifications, estimates and statements. If said commission shall determine that said maps and plans should be modified so as to include territory to be benefited or otherwise, not included in the maps, plans and statements already filed, then they shall cause modified maps, plans, specifications, estimates and statements to be prepared and filed as hereinbefore provided, for said preliminary maps, plans, specifications, estimates and statements, and shall give notice of their completion and filing and of a hearing thereupon, in the manner hereinbefore prescribed for a hearing upon said preliminary maps, plans, specifications, estimates and statements. If said commission shall finally determine that the proposed improvement be made, it shall thereupon make a final order directing the same to be made, and shall cause to be prepared a final map, detailed plans, specifications and estimates of the total cost thereof. The commission shall cause the said final order, map, plans, specifications and estimates, or duplicates thereof, certified by them, to be filed in the office of the county clerk of each county in which lands affected or benefited thereby are located. No such improvement shall be undertaken under this act pursuant to any such final order, or any other proceedings had thereon except as hereinbefore provided, until after the said final order shall have been approved by a subsequent act of the legislature which act shall authorize and specifically designate the improvement singly directed by such final order to be made. If so approved, the said final order shall become effectual and not otherwise.

§ 5. When any such final order shall have been made and approved by an act of the legislature as hereinbefore provided, such commission shall advertise two successive weeks in the state paper and in two newspapers published in the county wherein such work is to be performed, and if in more than one county, then in each of such counties, and in such other newspaper as shall be deemed of advantage, for bids or proposals for said work to be made in writing for the construction of such dam or dams, dykes or other works according to such plans and specifications. Upon the receipt of the proposals, such commission may enter

into a contract or contracts with the lowest responsible bidders for the work to be done, or may reject any or all bids and again advertise for further bids. Before entering into any such contract, a bond with sufficient sureties shall be required, conditioned that the contractor will perform all work within the time prescribed in accordance with the plans and specifications, and will indemnify the state and said commission of and from all liability for damages occasioned or suffered by reason of the negligence or willful fault of such contractor, his employees or any subcontractor or his employees in doing such work. Partial payments for work actually done may be provided for in the contracts and paid in the manner hereinafter provided to an amount not to exceed ninety per centum of the contract price. The payments due on account of any such contracts or for any necessary expense or work in connection therewith in pursuance of this act shall be paid from the river improvement fund as hereinafter provided for.

§ 6. The commission may enter upon any land, structures and waters which in its judgment shall be necessary to enter upon for the purposes of this act. If the owner of any property to be taken shall agree with said commission upon the sum to be paid therefor, or for any damages sustained, such sum shall be paid as hereinafter provided as part of the necessary expense incurred in carrying out any improvement under the provisions of this act.

§ 7. If the commission cannot agree with the owners upon the compensation and damages to be paid for the property to be so taken and appropriated the commission shall thereupon serve upon such persons a notice that the lands and property described therein have been appropriated by the state for the purposes of this act, and shall proceed to acquire title thereto under the provisions of title one of chapter twenty-three of the code of civil procedure, known as the condemnation law.

§ 8. When proceedings are taken under the condemnation law the commission shall file in the comptroller's office a certified copy of the final order provided for in section thirty-three hun-

dred and seventy-one of the code of civil procedure, and a certified copy of the judgment therein rendered pursuant to section thirty-three hundred and seventy-three of said code, together with a certificate of the attorney-general that no appeal from such final order and judgment has been or will be taken by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court affirming in whole or in part said final judgment. The comptroller shall issue to the said commission or such officer thereof, as it shall direct, his warrant for the payment of the amount due upon such final order and judgment with interest from the date of the judgment until the thirtieth day after the entry of such final order and judgment, and the same shall be paid out of the river improvement fund hereinafter provided for. Such warrant shall be payable to and shall be delivered by the commission or its officers to the owner or owners of said judgment according to the terms thereof.

§ 9. As soon as the total cost of such improvements, including compensation for lands, property, property rights and all damages whatsoever suffered by reason thereof, and all expenses of the commission necessarily incurred or to be incurred in connection therewith, less the amount thereof chargeable to the state, can be determined, said commission shall make a complete and detailed verified statement thereof. They shall apportion the same between the respective counties, towns, cities, villages and individual properties which according to their determination\* made as hereinbefore provided, are benefited by said improvements. Said apportionment shall be in writing, and shall specify the proportion thereof to be paid by each of said counties, towns, cities and villages as a whole for public benefits which each as a whole will receive therefrom, and it shall specify the benefits of individual properties, whether in such counties, cities, towns and villages aforesaid or not. The commission shall express such proportions in decimals according to the benefits received therefrom, and shall de-

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\*So in the original.

termine whether the same shall be paid in one assessment or in annual assessments not exceeding twenty in all. If the commission determine that the sum so apportioned shall be paid in annual installments, it shall add to each apportionment an amount sufficient to pay all necessary interest money, specifying the amount of each installment. Upon completion of such apportionment, the commission shall cause a true copy thereof to be served upon the chairman of the board of supervisors of each county, the mayor of each city, the supervisor of a town, the president of a village named in said apportionment, or if service cannot be had upon such mayor, supervisor, or president, then upon the board of aldermen of the city, the town board of the town, or the board of trustees of the village, by delivering the same openly to one of them while in session. A copy thereof shall also be served upon each individual owner of property assessed, either by delivery to such owner or by posting the same upon the said property, and by duly publishing a copy thereof for three weeks in two newspapers published in the county where such property is situated. With such apportionment and as a part thereof, shall be served a notice specifying a time and place where such commission shall meet to hear any county, town, city, village or person interested or aggrieved thereby. Said apportionment and notice shall be served at least fifteen days before such meeting if the service is personal, and at least three weeks before said meeting, if the same is by publication. The affidavit of the person serving or publishing such notice shall be evidence thereof. The commission shall meet at the time and place specified and hear all persons interested in or aggrieved by said apportionment. After such hearing the commission may modify or amend such apportionment in which case it shall serve a true copy thereof and notice of a hearing thereon in the same manner upon the same conditions and with the same force and effect as the first apportionment and notices. Any county, city, town or village, or any person deeming itself aggrieved may review the determination of the commission in the same manner as a review is had of the determination of a board of assessors in making an

assessment. Whenever it shall be determined by the commission that any portion of the total cost of such improvement shall be borne by the individual properties benefited, it shall proceed to apportion that part among such individual properties in the following manner. A committee of three of its members shall be appointed who shall have power to apportion and assess such cost upon the individual properties benefited in proportion to the benefit received. Said committee shall prepare or cause to be prepared a list showing each parcel benefited together with the name of the owner thereof so far as the same can be ascertained. The said committee shall view the premises and determine the proportion of benefit received by each parcel. They shall thereupon cause to be prepared a statement of their determination showing the parcels benefited with the proportion of benefit received expressed in decimals. They shall cause a copy of such statement to be served upon the owner or owners of each parcel assessed together with notice of a time and place not less than two weeks at which a hearing will be given thereon, at which any person deeming himself aggrieved shall be heard. Such notice shall be served personally, and in case personal service cannot be made, by publication thereof for two weeks in two newspapers published in the county where said property is situated. Upon said hearing the committee may confirm, modify or alter their determination, and shall thereupon make a final decision assessing that portion of the cost of such improvement to be borne by the individual properties benefited, upon the said properties in proportion to the benefit received expressed in decimals, and determining whether the same shall be paid in one sum or in annual installments not exceeding twenty in all, and shall cause a copy thereof to be served upon the owner or owners of each parcel assessed. The determination of such committee may be reviewed in the same manner as a review is had of a determination of the board of assessors in making an assessment. The said committee shall report such final determination and assessment, with their proceedings thereon to the commission and upon the adoption and confirmation thereof by said commission the same shall be

and become operative as an apportionment and assessment of the costs and expenses to be borne by the individual properties benefited by such improvement.

§ 10. The commission shall then make a final statement of the total cost and expense of such improvement, and of the apportionment and assessment thereof and file the same as hereinafter provided. Said statement shall contain a statement of the total amount of said costs and expenses, and a statement of the respective counties, cities, towns and villages benefited thereby with the proportion of benefit received by each county, city, town or village expressed in decimals. It shall also contain a statement of the amount of such costs and expenses which is to be paid by the individual properties benefited, with a description of each parcel, the name of the owner or owners, so far as known, the city, town or village where situated and the proportion of benefit received expressed in decimals. It shall also contain a statement whether the amount so assessed upon any county, city, town, village or individual is to be paid in one sum or in annual installments as hereinbefore provided and the amount of each annual installment in case the same is to be so paid. A copy of such statement duly verified under the seal of the commission shall be filed with the clerk of each county, town, city or village containing any lands herein stated to be benefited. The clerk of such county, city, town or village, shall make and deliver to the board of supervisors of such county, the common council of such city, the board of trustees of such village, and the assessors of such town, city or village, a copy of such statement. The board of supervisors of each such county shall levy and assess upon the county and upon each town specified in such statement the amount of such benefit which in such statement is certified to be the proportion which should be borne by the county or by such town as a whole. The common council of each city and the board of trustees of each village shall in like manner levy and assess upon such cities and villages respectively the amount stated in such statement which should be paid by each of such cities and villages respectively. The assessors of each town, city or village



containing individual properties upon which a portion of such cost is assessed shall enter on a separate page in their assessment roll a statement of the total amount to be so paid by such individual properties, a description of each parcel and the proportion of benefit received expressed in decimals, as contained in the statement filed with them. And the board of supervisors of each county where such property is situated shall levy and assess against each such parcel so much of the amount to be raised as shall correspond with the amount of benefit received as indicated by the decimal set down after the description thereof as hereinbefore provided and shall by their warrant direct the collection thereof in the same manner and by the same procedure as general taxes are collected, except that no personal property of the owner of the parcel shall be seized or sold to pay the tax, and that the particular tax assessed on account of such improvement, shall be satisfied only by a sale and conveyance of the parcel benefited. And in case it is determined that the amount required is to be paid in annual installments, the board of supervisors or the assessors of the city, town or village, as the case may be, shall annually assess the annual installment to be paid by such county, city, town, village or individual, in the manner provided by this section, until the whole shall be paid. Upon the assessment by the commission of the benefits as provided in this section, the amounts apportioned shall be and remain charges against the several municipalities and liens upon the several parcels of property charged therewith, until paid or otherwise removed, superior in force and effect to all other liens except unpaid general taxes. All moneys collected under and by virtue of the provisions of this act shall be paid to the county treasurer of the county benefited or of the county in which the town, city, village or property is located, who shall pay the same on or before the first day of June in each year to the comptroller of the state, who shall deposit the same in a depository bank to the credit of the river improvement fund as herein provided for. Provided, however, that any county, city, village or individual who

may elect to pay the whole of their apportionment, or the portion thereof at any time remaining unpaid, instead of in installments as hereinbefore provided, may pay the same to the county treasurer, and be discharged therefrom.

§ 11. The commission may from time to time make and issue bonds to pay the cost of improvements under this act. Separate issues of bonds shall be made for each separate work of improvement, and no issue shall exceed the aggregate assessment made for the improvement on which such issue of bonds is made. Such bonds shall show upon their face that the payment thereof is secured by an assessment for an improvement as provided in this act, and the proceeds of the assessment for the improvement on which such bonds are issued, shall be pledged for the payment of such issue of bonds. They shall by their terms become due and payable as determined by the commission not exceeding twenty years from the date of issue, and bearing interest not exceeding four per centum per annum, payable semiannually. Before issue such bonds must be approved as to amount, and countersigned by the comptroller. They shall also be signed by the president of the commission, and have the seal of the commission attached thereto. Such bonds shall be exempt from taxation in this state. They shall be sold by the comptroller at not less than par and accrued interest, and the proceeds thereof deposited in a national or state bank either at Albany or in one of the counties in which such improvement is made, to be approved by said comptroller and the president of the commission. But before any such deposit is made, the comptroller shall require from such bank a bond as security for repayment of the same, to be approved by him as to form, conditions and sufficiency of sureties which shall provide for the repayment to such commission upon demand of the moneys so deposited. Moneys received under the provisions of this act shall constitute a fund to be known as the river improvement fund and all requisitions of the commission for payments for the purposes of this act shall be made by the commission or the officer of the commission authorized by it so to do and countersigned by the comp-

troller, upon that part of the river improvement fund applicable to the improvement for which such requisition is made.

§ 12. To temporarily provide for the expenditures which must necessarily be made before the proceeds from the sale of the bonds herein authorized become available, the commission is hereby authorized to issue certificates of indebtedness bearing interest at five per centum per annum which may be used only for the payment of liabilities incurred under this act in anticipation of the sale of bonds therefor. A separate issue of such certificates may be made for each separate work of improvement, the amounts to be approved by the comptroller, not to exceed the aggregate-estimated cost for such improvement made as in pursuance of section four of this act. These certificates shall be issued in the name of the commission and shall be styled "river improvement certificates." They shall be signed by the president of said commission, countersigned by the comptroller, shall have the seal of the commission attached, be attested by its secretary and be payable principal and interest from the river improvement fund created by this act in like manner and effect as requisitions by the commission are herein provided to be paid.

§ 13. The commission shall have an official seal. The term of the member of the commission not holding a state office other than member of the commission, shall be five years. The commission shall organize under this act by the selection of one of its members as president who shall preside at its meetings, and perform such other duties as are provided by law, or directed by the commission. The member of the commission not holding a state office, other than as a member of the commission, shall not receive a salary, but shall be paid his necessary and reasonable expenses actually incurred in the prosecution of his duties, and may also receive a just and reasonable per diem compensation to be fixed by his associate members of the commission, subject to the approval of the governor, for time actually employed by him in the work of the commission. Three members of the commission shall constitute a quorum at any hearing by the commission but a majority of the commission must concur in any deter-

mination of the commission and at least four members must concur in any determination for an improvement under this act. The commission is hereby authorized and empowered to employ a secretary and such engineers, stenographers, clerks and other subordinates as the duties imposed upon them by this act may require, and to fix and pay the reasonable salaries and expenses of such officers, and of all other subordinates for the purpose of proceedings by them under this act. The commission shall have power to charge to each improvement undertaken by it such portion of the expenses so incurred as it shall determine ratably and equitably is chargeable thereto and to include the same in the apportionment or assessment of the cost and expenses of such improvement.

§ 14. The care, control, operation and maintenance of improvements provided for in this act shall devolve upon the commission, and the expenses thereof shall be a charge upon the various municipalities and properties according to the benefits derived therefrom respectively, to be collected in the same manner that the original cost and expense of the improvement was collected. Any person who shall open or close or cause to be opened or closed a gate or gates in any dam constructed under this act without the consent of the commission, or an officer thereof, shall be guilty of a misdemeanor.

§ 15. The commission shall annually on or before the first Monday in February in each year submit a written report to the legislature. This report shall contain

1. An exhibit of the personnel of the commission and of all engineers and other persons connected with the commission.

2. A financial statement showing fully and clearly the condition of the finances of the commission, the amounts and dates of maturity of all bonds and certificates of indebtedness, the amounts of money received and their sources; the amounts of money paid and the purposes for which the same was paid.

3. A statement of the several petitions received by the commission and the action taken thereon.

4. A descriptive statement of each work of improvement on which work has been done during the previous year.

5. A statement of the conditions of improvements previously completed and the results secured by the work of improvement in each case.

In addition to the details as outlined above, the commission shall report to the legislature such other matters as it shall deem proper.

§ 16. The sum of ten thousand dollars or so much thereof as may be necessary is hereby appropriated out of any moneys in the treasury not otherwise appropriated to enable the commission to commence proceedings under this act. The provisions of this act, or the proceedings had or the work done in accordance therewith, shall not be construed as annulling or affecting any power of eminent domain, right, privilege or franchise heretofore created or conferred by law or acquired thereunder nor to permit the actual construction of any dam upon lands which now constitute a private park under and pursuant to article eleven of chapter twenty of the laws of nineteen hundred or pursuant to law, without the consent of the owner of such lands.

#### CHAP. 401, LAWS OF 1905.

AN ACT to amend the banking law, relative to securities in which deposits in savings banks may be invested.

SECTION 1. Subdivision five of section one hundred and sixteen of chapter six hundred and eighty-nine of the laws of eighteen hundred and ninety-two, entitled "An act in relation to banking corporations," as amended by chapter four hundred and forty of the laws of eighteen hundred and ninety-three, chapter eight hundred and thirteen of the laws of eighteen hundred and ninety-five, chapter four hundred and fifty-four of the laws of eighteen hundred and ninety-six, chapter three hundred and eighty-six of the laws of eighteen hundred and ninety-seven, and chapter five hundred and ninety-eight of the laws of nineteen hundred and two, is hereby amended to read as follows:

5. In the stocks or bonds of any incorporated city situated in one of the states of the United States which was admitted to statehood prior to January first, eighteen hundred and ninety-six,

and which, since January first, eighteen hundred and sixty-one, has not repudiated or defaulted in the payment of any part of the principal or interest of any debt authorized by the legislature of any such state to be contracted, provided said city has a population, as shown by the federal census next preceding said investment, of not less than forty-five thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of said investment, and has never defaulted for more than ninety days in the payment of any part either of principal or interest of any bond, note or other evidence of indebtedness, or effected any compromise of any kind with the holders thereof. If at any time the indebtedness of any such city, together with the indebtedness of any district, or other municipal corporation or subdivision except a county, which is wholly or in part included within the bounds or limits of said city, less its water debt and sinking funds shall exceed seven per centum of the valuation of said city for purposes of taxation, its bonds and stocks shall thereafter, and until such indebtedness shall be reduced to seven per centum of the valuation for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks, but the superintendent of the banking department may, in his discretion, require any savings bank to sell such bonds or stock of said city as may have been purchased prior to said increase of debt.

§ 2. Subdivision six of section one hundred and sixteen of said chapter, as amended by chapter eight hundred and thirteen of the laws of eighteen hundred and ninety-five, chapter two hundred and thirty-six of the laws of eighteen hundred and ninety-eight, chapter three hundred and eighty-six of the laws of eighteen hundred and ninety-nine, chapter forty-two of the laws of nineteen hundred, chapter four hundred and forty of the laws of nineteen hundred and two, and chapter six hundred and forty of the laws of nineteen hundred and three, is hereby amended to read as follows:

6. In bonds and mortgages on unincumbered real property situated in this state, to the extent of sixty per centum of the value

thereof. Not more than sixty-five per centum of the whole amount of deposits shall be so loaned or invested. If the loan is on unimproved and unproductive real property, the amount loaned thereon shall not be more than forty per centum of its actual value. No investment in any bonds and mortgages shall be made by any savings bank except upon the report of a committee of its trustees charged with the duty of investigating the same, who shall certify to the value of the premises mortgaged or to be mortgaged, according to their best judgment, and such report shall be filed and preserved among the records of the corporation. Also in the following securities:

(a) The first mortgage bonds of any railroad corporation of this state, the principal part of whose railroad is located within this state, or of any railroad corporation of this or any other state or states connecting with and controlled and operated as a part of the system of any such railroad corporation of this state, and of which connecting railroad at least a majority of its capital stock is owned by such a railroad corporation of this state or in the mortgage bonds of any such railroad corporation of an issue to retire all prior mortgage debt of such railroad companies respectively; provided that at no time within five years next preceding the date of any such investment shall such railroad corporation of this state or such connecting railroad corporation respectively have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to four per centum upon all its outstanding capital stock; and provided, further, that at the date of every such dividend the outstanding capital stock of such railroad corporation, or such connecting railroad company respectively shall have been equal to at least one-third of the total mortgage indebtedness of such railroad corporations respectively, including all bonds issued or to be issued under any mortgage securing any bonds in which such investment shall be made.

(b) The mortgage bonds of the following railroad corporations: The Chicago and Northwestern railroad company, Chicago, Burlington and Quincy railroad company, Michigan Central railroad company, Illinois Central railroad company, Pennsylvania railroad company, Delaware and Hudson company, Delaware, Lackawanna and Western railroad company, New York, New Haven and Hartford railroad company, Boston and Maine railroad company, Maine Central railroad company, the Chicago and Alton railroad company, Morris and Essex railroad company, Central railroad of New Jersey, United New Jersey railroad and canal company, also in the mortgage bonds of railroad companies whose lines are leased or operated or controlled by any railroad company specified in this paragraph if said bonds be guaranteed both as to principal and interest by the railroad company to which said lines are leased or by which they are operated or controlled. Provided that at the time of making investment authorized by this paragraph the said railroad corporations issuing such bonds shall have earned and paid regular dividends of not less than four per centum per annum in cash on all their issues of capital stock for the ten years next preceding such investment, and provided the capital stock of any said railroad corporations shall equal or exceed in amount one-third of the par value of all its bonded indebtedness; and further provided that all bonds authorized for investment by this subdivision shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad and railroad property of the company issuing such bonds, or that such bonds shall be mortgage bonds of an issue to retire all prior mortgage debts of such railroad company; provided, further, that the mortgage which secures the bonds authorized by this subdivision is dated, executed and recorded prior to January first, nineteen hundred and five.

(c) The mortgage bonds of the Chicago, Milwaukee and Saint Paul railway company, and the Chicago, Rock Island and Pacific railway company, so long as they shall continue to earn and pay at least four per centum dividends per annum on their outstand-



ing capital stock, and provided their capital stock shall equal or exceed in amount one-third of the par value of all their bonded indebtedness, and further provided that all bonds of either of said companies hereby authorized for investment shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad or railroad property actually in the possession of and operated by said company, or that such bonds shall be mortgage bonds of an issue to retire all prior debts of said railroad company; provided, further, that the mortgage which secures the bonds authorized by this subdivision is dated, executed and recorded prior to January first, nineteen hundred and five.

(d) The first mortgage bonds of the Fonda, Johnstown and Gloversville railroad company, or in the mortgage bonds of said railroad company of an issue to retire all prior mortgage debts of said railroad company, and provided the capital stock of said railroad company shall equal or exceed in amount one-third of the par value of all its bonded indebtedness and provided also that such railroad be of standard gauge of four feet eight and one-half inches, and in the mortgage bonds of the Buffalo Creek railroad company of an issue to retire all prior mortgage debts of said railroad company, provided that the bonds authorized by this subdivision are secured by a mortgage dated, executed and recorded prior to January first, nineteen hundred and five.

(e) The mortgage bonds of any railroad corporation incorporated under the laws of any of the United States, which actually owns in fee not less than five hundred miles of standard gauge railway exclusive of sidings, within the United States, provided that at no time within five years next preceding the date of any such investment shall such railroad corporation have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to four per centum upon all its

outstanding capital stock; and provided further that during said five years the gross earnings in each year from the operations of said company, including therein the gross earnings of all railroads leased and operated or controlled and operated by said company, and also including in said earnings the amount received directly or indirectly by said company from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable during that year upon its entire outstanding indebtedness, and the rentals for said year of all leased lines, and further provided that all bonds authorized for investment by this subdivision shall be secured by a mortgage which is at the time of making said investment or was at the date of the execution of said mortgage (1) a first mortgage upon not less than seventy-five per centum of the railway owned in fee by the company issuing said bonds exclusive of sidings at the date of said mortgage or (2) a refunding mortgage issued to retire all prior lien mortgage debts of said company outstanding at the time of said investment and covering at least seventy-five per centum of the railway owned in fee by said company at the date of said mortgage. But no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which together with all outstanding prior debts of said company, after deducting therefrom in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of said company at the time of making said investment. And no mortgage is to be regarded as a refunding mortgage, under the provisions of this act, unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least twenty-five per centum greater than is covered by any one of the prior mortgages so to be refunded.

(f) Any railway mortgage bonds which would be a legal investment under the provisions of subdivision (e) of this section,

except for the fact that the railroad corporation issuing said bonds actually owns in fee less than five hundred miles of road, provided that during five years next preceding the date of any such investment the gross earnings in each year from the operations of said corporation, including the gross earnings of all lines leased and operated or controlled and operated by it, shall not have been less than ten million dollars.

(g) The mortgage bonds of a railroad corporation described in the foregoing subdivisions (e) or (f) or the mortgage bond of a railroad owned by such corporation, assumed or guaranteed by it by endorsement on said bonds, provided said bonds are prior to and are to be refunded by a general mortgage of said corporation the bonds secured by which are made a legal investment under the provisions of said subdivisions (e) or (f); and provided, further, that said general mortgage covers all the real property upon which the mortgage securing said underlying bonds is a lien.

(h) Any railway mortgage bonds which would be a legal investment under the provisions of subdivisions (e) or (g) of this section, except for the fact that the railroad corporation issuing said bonds actually owns in fee less than five hundred miles of road, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by, or provided said bonds have been assumed by a corporation whose first mortgage, or refunding mortgage bonds, are a legal investment under the provisions of subdivision (e) or (f) of this section. But no one of the bonds so guaranteed or assumed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which, together with all the outstanding prior debts of the corporation making said guarantee or so assuming said bonds, including therein the authorized amount of all previously guaranteed or assumed bond issues, shall exceed three times the capital stock of said corporation, at the time of making said investment.

(i) The first mortgage bonds of a railroad the entire capital stock of which, except shares necessary to qualify directors, is owned by, and which is operated by a railroad whose last issued

refunding bonds are a legal investment under the provisions of subdivisions (a), (e), or (f) of this section, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by the company so owning and operating said road, and further provided the mortgage securing said bonds does not authorize an issue of more than twenty thousand dollars in bonds for each mile of road covered thereby. But no one of the bonds so guaranteed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which together with all the outstanding prior debts of the company making said guarantee, including therein the authorized amount of all previously guaranteed bonds issues, shall exceed three times the capital stock of said company, at the time of making said investment.

Not more than twenty-five per centum of the assets of any bank shall be loaned or invested in railroad bonds, and not more than ten per centum of the assets of any bank shall be invested in the bonds of any one railroad corporation described in paragraph a of this subdivision, and not more than five per centum of such assets in the bonds of any other railroad corporation. In determining the amount of the assets of any bank under the provisions of this subdivision its securities shall be estimated in the manner prescribed for determining the per centum of surplus by section one hundred and twenty-four of this act. Street railroad corporations shall not be considered railroad corporations within the meaning of this subdivision.

See chap. 406, Laws of 1901, and chap. 295, Laws of 1902, *ante*; and acts which this act amends.

#### CHAP. 723, LAWS OF 1905.

AN ACT to establish a state water commission, to define its powers and duties, and making an appropriation therefor.

SECTION 1. The governor, by and with the advice and consent of the senate, shall within fifteen days after this act takes effect, appoint five citizens of the state, one of whom shall be designated as president to constitute a commission to be known as the state water supply commission. Any three of said commissioners shall

constitute a quorum for the transaction of business. The commission shall make necessary rules and regulations for the proceedings hereunder.

§ 2. No municipal corporation or other civil division of the state, and no board, commission or other body of or for any such municipal corporation or other civil division of the state shall, after this act takes effect, have any power to acquire, take or condemn lands for any new or additional sources of water supply, until it has first submitted the maps and profiles therefor to said commission, as hereinafter provided, and until said commission shall have approved the same.

§ 3. Any municipal corporation or other civil division of the state may make application by petition in writing to the said commission for the approval of its maps and profiles of such new or additional source or sources of water supply for such municipal corporation or other civil division of the state. Such application shall be accompanied by an exhibit of maps of the lands to be acquired and profiles thereof showing the sites and areas of the proposed reservoirs and other works, the profiles of the aqueduct lines and the flow lines of the water when impounded, plans and surveys and abstract of official reports relating to the same, showing the need of such municipal corporation for a particular source or sources of supply and the reasons therefor, and shall be accompanied by a plan or scheme to determine and provide for the payment of the proper compensation for any and all damages to persons or property, whether direct or indirect, which will result from the acquiring of said lands and the execution of said plans. Said commission shall thereupon cause public notice to be given that on a day therein named the commission will meet at its office in the city of Albany, or at such other place as it may particularly specify in said notice, for the purpose of hearing all persons, municipal corporations or other civil divisions of the state that may be affected thereby. Such notice shall be published in such newspapers and for such length of time, not exceeding four weeks, as the commission shall determine. At any time prior to the day specified in such notice any

person or municipal corporation or the proper authorities of any civil division of the state may file in the office of the commission at Albany objections to the project proposed by such application. Every objection so filed shall particularly specify the ground thereof. Said commission shall, upon the day specified in said notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to examine the said maps and profiles and to hear the proofs and arguments submitted in support and in opposition to the proposed project, but no person, municipal corporation or local authorities shall be heard in opposition thereto except on objections filed as authorized by this section. The commission shall determine whether the plans proposed by such municipal corporation or other civil division of the state are justified by public necessity, and whether such plans are just and equitable to the other municipalities and civil divisions of the state affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply, and whether said plans make fair and equitable provisions for the determination and payment of any and all damages to persons and property, both direct and indirect which will result from the execution of said plans. Said commission shall within ninety days after the final hearing and with all convenient speed, either approve such application as presented or with such modifications in the plans submitted as it may deem necessary to protect the water supply and the interest of any other municipal corporation, or other civil division of the state, or the inhabitants thereof, or to bring into cooperation all municipal corporations, or other civil divisions of the state, which may be affected thereby. Or it may reject the application entirely or permit another to be filed in lieu thereof, but it shall, however, make a reasonable effort to meet the needs of the applicant, with due regard to the actual or prospective needs and interests of all other municipal corporations and civil divisions of the state affected thereby and the inhabitants thereof. Whenever the commission shall make a decision on any application submitted to it by any municipal corporation or other civil

division of the state it shall state the same in writing and sign the same and cause its official seal to be affixed thereto and file the same, together with all plans, maps, surveys and other papers or records relating thereto in its office. The decision of the commission and its action on any application may be reviewed by certiorari proceedings. The expense of any such hearing and determination by the commission shall be certified by said commission to the municipal corporation or other civil division of the state making such application and shall be paid by said municipal corporation or other civil division of the state to the state treasurer within thirty days thereafter.

§ 4. Said commission shall have power to subpoena and require the attendance in this state of witnesses and the production by them of books and papers pertinent to the investigation and inquiries authorized and to examine them and such public records as it shall require in relation thereto. And for the purposes of the examinations authorized by this act, the commission shall possess all the powers conferred by the legislative law upon a committee of the legislature or by the code of civil procedure upon a board or committee, and may invoke the power of any court of record in the state to compel the attendance and testifying of witnesses and the production by them of books and papers as aforesaid.

§ 5. The commission shall have an official seal. The term of each member of the commission shall be five years, except that the members of said commission first appointed shall hold office respectively one for one year, one for two years, one for three years, one for four years and one for five years, and as the term of each commissioner expires or otherwise becomes vacant his successor shall be appointed in the manner hereinbefore provided for the appointment of the original commissioners. The members of the commission shall not receive a salary, but shall be paid their necessary and reasonable expenses actually incurred in the prosecution of their duties, and may also receive a just and reasonable compensation, subject to the approval of the governor, for the time actually employed by them in the work of the com-

mission. The commission is hereby authorized and empowered to employ a secretary and such engineers, stenographers, clerks and other subordinates as the duties imposed upon them by this act may require, and to fix and pay the reasonable salaries and expenses of such officers, and of all other subordinates for the purpose of proceedings by them under this act, subject to the approval of the governor.

§ 6. In addition to the powers and duties heretofore conferred upon it, said commission shall immediately after its appointment proceed to make an investigation and report to the legislature as part of its first annual report hereinafter provided for, concerning the available sources of water supply in this state, the respective purity and quantity of each source of supply and the availability of each to be used for localities other than those immediately adjacent thereto. Said commission shall also investigate and report at said time the present water supply of each municipal corporation and other civil divisions of the state to ascertain the present and future needs of each of said municipal corporations and other civil divisions of the state, and the supply therefor, and the purity of each of said supplies. Said commission shall also report the present dispositions of sewerage of each municipal corporation and other civil division of the state, and, if necessary, of adjoining states, with special reference to said disposition affecting the various municipal corporations and other civil divisions of the state in relation to the water supply of this state. Said commission shall also report the advisability of, the time required for and the expenses incident to, the construction of a state system of water supply and for a state system for the disposition of sewerage, if necessary, for all or any of the municipal corporations and other civil divisions of this state, and make such recommendations connected with the subjects of said investigations herein provided for as said commission shall determine. In said investigation concerning either the water supply or disposition of sewerage, said commission shall, so far as possible, make use of all reports and surveys in regard thereto which have heretofore been made. For the purposes of such



investigations as are provided for in this section said commission shall have all the powers and authority conferred by section four hereof.

§ 7. The commission shall annually, on or before the first day of February in each year, submit a written report of its proceedings during the preceding year to the legislature.

§ 8. Nothing herein contained shall in any way affect the acquiring of lands by the aqueduct commissioners of The City of New York under the provisions of chapter four hundred and ninety of the laws of eighteen hundred and eighty-three as heretofore amended.

§ 9. The sum of forty thousand dollars or so much thereof as may be necessary is hereby appropriated out of any moneys in the treasury, not otherwise appropriated, to be paid by the state treasurer upon the warrant of the comptroller for the purposes of this act.

§ 10. All other acts and parts of acts inconsistent with this act are hereby repealed.

# TAX LAWS RELATING TO RAILROADS.

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## CHAP. 675, LAWS OF 1881.

AN ACT to facilitate the payment of school taxes by railroad companies.

Duty of school collector to deliver to county treasurer certain statement; duty of county treasurer in the premises.

SECTION 1. It shall be the duty of the school collector in each school district in this state, except in the counties of New York, Kings and Cattaraugus, within five days after the receipt by such collector of any and every tax or assessment-roll of his district, to prepare and deliver to the county treasurer of the county in which such district, or the greater part thereof, is situated, a statement showing the name of each railroad company appearing in said roll, the assessment against each of said companies for real and personal property respectively, and the tax against each of said companies. It shall thereupon be the duty of such county treasurer, immediately after the receipt by him of such statement from such school collector, to notify the ticket agent of any such railroad company assessed for taxes at the station nearest to the office of such county treasurer, personally or by mail, of the fact that such statement has been filed with him by such collector, at the same time specifying the amount of tax to be paid by such railroad company.

Thus amended, Laws of 1885, Chap. 533.

Time in which tax may be paid with one per cent. fees.

§ 2. Any railroad company heretofore organized, or which may hereafter be organized, under the laws of this state, may within thirty days after the receipt of such statement by such county treasurer, pay the amount of tax so levied or assessed against it in such district and in such statement mentioned and contained with one per centum fees thereon, to such county treasurer, who is hereby authorized and directed to receive such amount and to give proper receipt therefor.

If tax not paid within thirty days, duty of collector to collect; limitation.

§ 3. In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of such county treasurer to notify the collector of the school district in which such delinquent railroad company is assessed, of its failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect such unpaid tax in the manner now provided by law, together with five per centum fees thereon; but no school collector shall collect by distress and sale any tax levied or assessed in his district upon the property of any railroad company until the receipt by him of such notice from the county treasurer.

Tax to be placed to credit of school district, paid to collector on demand, fees to go to collector on demand.

§ 4. The several amounts of tax received by any county treasurer in this state, under the provisions of this act, of and from railroad companies shall be by such county treasurer placed to the credit of the school district for or on account of which the same was levied or assessed, and on demand paid over to the school collector thereof, and the one per centum fees received therewith shall be placed to the credit of, and on demand paid to, the school collector of such school district.

Tax may be paid to collector direct.

§ 5. Nothing in this act contained shall be construed to hinder, prevent or prohibit any railroad company from paying its school tax to the school collector direct, as now provided by law.

## CHAP. 686, LAWS OF 1892.

AN ACT in relation to counties, constituting chapter eighteen of the general laws.

\* \* \* \* \*

Statement of railroad, telegraph, telephone and electric-light taxes.

§ 53. The clerk shall, within five days after the making out, or issuing of the annual tax-warrant by the board of supervisors, prepare and deliver to the county treasurer of his county, a statement showing the title of all railroad corporations and telegraph, telephone and electric-light lines in such county, as appear on the last assessment-roll of the towns or cities therein, the valuation of the property, real and personal, of such corporation and line in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in his county.

## CHAP. 908, LAWS OF 1896.

AN ACT in relation to taxation, constituting chapter twenty-four of the general laws.

## CHAPTER XXIV OF THE GENERAL LAWS.

## ARTICLE I.

Short title.

SECTION 1. This chapter shall be known as the tax law.

Definitions.

§ 2. 1. "Tax district" as used in this chapter, means a political subdivision of the state having a board of assessors authorized to assess property therein for state and county taxes.

2. "County treasurer" includes any officer performing the duties devolving upon such office under whatever name.

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substruc-

tures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, crannage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical condutors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

Subdivision 3 thus amended by chap. 712, Laws of 1899, taking effect October 1, 1899.

4. The term special franchise shall not be deemed to include the crossing of a street, highway or public place where such crossing is not at the intersection of another street or highway, unless such crossing shall be at other than right angles for a distance of not less than two hundred and fifty feet, in which case the whole of such crossing shall be deemed a special franchise. This subdivision shall not apply to any elevated railroad.

Subdivision 4 added by chap. 490, Laws of 1901.

5. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed\* corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

Made subdivision 5 by chap. 490, Laws of 1901.

#### **Property liable to taxation.**

§ 3. All real property within this state, and all personal property situated or owned within this state, is taxable unless exempt from taxation by law.

§ 4. Subdivision 16. The owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

See section 243 of this act (not printed herein), as to exemptions not applying to taxable transfers.

\* \* \* \* \*

#### **Place of taxation of property of corporations.**

§ 11. The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals.

\*So in original.

All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

#### **Taxation of corporate stock.**

§ 12. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

\* \* \* \* \*

### **ARTICLE II.**

#### **Mode of Assessment.**

##### **Preparation of assessment roll.**

§ 21. They shall prepare an assessment roll containing six separate columns and shall, according to the best information in their power, set down:

1. In the first column the names of all the taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents and if payable in any other thing except money the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the rent assessed can not be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

6. In the sixth column the value of the special franchise as fixed by the state board of tax commissioners.

Thus amended by chap. 712, Laws of 1899, taking effect October 1, 1899.

7. Such assessment roll shall contain two additional columns in one of which shall be inserted the amount of the tax levied against each person named therein, and in the other the date of the payment of such tax.

Subdivision 7 added by chap. 159, Laws of 1901.

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### Reports of corporations.

§ 27. The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the state, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in excepting therefrom the sums paid for real property and the



amount of such capital stock held by the state and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

#### Penalty for omission to make statement.

§ 28. In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this state for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not willful, may, in his discretion, discontinue such suit.

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#### Corporations, how assessed.

§ 31. The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and

the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property, except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in, and of all of such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the state board of tax commissioners.

Thus amended by chap. 712, Laws of 1899, taking effect October 1, 1899.

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#### Notice of completion of assessment roll.

§ 35. The assessors shall complete the assessment roll on or before the first day of August, and make out a copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places in the tax district, stating that they have completed the assessment roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments. Upon application by a nonresident owner of real estate, having real estate in more than one tax district, the assessors may fix a time subsequent to the third Tuesday in August, but not later than the thirty-first day of August, for a hearing and to review their assessment. In any city the notice shall conform to the requirements of the law regulating

the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit to the inspection of every person applying for that purpose.

Thus amended by chap. 385, Laws of 1904.

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§ 37. When the assessors or a majority of them shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths and shall severally make and subscribe before such officer an oath in the following form: "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the state board of tax commissioners, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.

Thus amended by chap. 712, Laws of 1899, taking effect October 1, 1899.

\* \* \* \* \*

**Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies between school districts.**

§ 39. The assessors of each town in which a railroad, telegraph, telephone or pipe line company is assessed upon property

lying in more than one school district therein, shall, within fifteen days after the final completion of the roll, apportion the assessed valuation of the property of each of such corporations among such school districts. Such apportionment shall be signed by the assessors or a majority of them, and be filed with the town clerk within five days thereafter, and thereupon the valuation so fixed shall become the valuation of such property in such school district for the purpose of taxation. In case of failure of the assessors to act, the supervisor of the town shall make such apportionment on request of either the trustees of any school district or of the corporation assessed.\* The town clerk shall furnish the trustees a certified statement of the valuations apportioned to their respective districts. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year.

\* \* \* \* \*

#### **Assessment of special franchises.**

§ 42. The state board of tax commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, or tax district. After the time fixed for hearing complaints the tax commissioners shall finally determine the valuation of the special franchises, and shall file with the clerk of the city or town in which said special franchise is assessed a written statement duly certified by the secretary of the board of the valuation of each special franchise assessed therein as finally fixed and determined by said board; such statement of valuation shall be filed with the town clerk of the respective towns within thirty days next preceding the first day of July in each year; and with the clerks of cities of the state within thirty days before the date set opposite the name of each city in the following schedule. In the city of New York such statement shall be filed with the department of taxes and assessments.

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\* So in original.

SCHEDULE OF DATES FOR FILING OF ASSESSMENTS OF SPECIAL  
FRANCHISES.

Name of city.	Date.
Rochester .....	April first.
Jamestown .....	April first.
Ithaca .....	April first.
Gloversville .....	April first.
New York city.....	April first.
Auburn .....	May first.
Schenectady .....	June first.
Corning .....	June first.
Hornellsville .....	June first.
Oswego .....	June first.
North Tonawanda .....	July first.
Olean .....	July first.
Syracuse .....	July first.
Cohoes .....	July first.
Ogdensburg .....	July first.
Dunkirk .....	July first.
Troy .....	July first.
Rome .....	July first.
Watertown .....	July first.
Elmira .....	July first.
Lockport .....	July first.
Utica .....	July first.
Poughkeepsie .....	July first.
Little Falls .....	July first.
Watervliet .....	July first.
Niagara Falls .....	July first.
Kingston .....	July first.
Newburgh .....	July first.
Hudson .....	July first.
Amsterdam .....	July first.
Binghamton .....	July first.
Geneva .....	July first.

Name of city.	Date.
Middletown .....	July first.
Johnstown .....	July first.
Fulton .....	July first.
Plattsburgh .....	July first.
Tonawanda .....	July first.
Rensselaer .....	July first.
Oneida .....	July first.
Cortland .....	July first.
Yonkers .....	October first.
New Rochelle.....	October first.
Albany .....	October first.
Mount Vernon.....	October first.
Buffalo .....	December first.

Each city or town clerk shall, within five days after the receipt by him of the statement of assessment of a special franchise by the state board, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments in each tax district in said city or town and to the assessors of villages and commissioners of highways within their respective towns and villages. The valuations of every special franchise as so fixed by the state board shall be entered by the assessors or other officers in the proper column of the assessment roll before the final revision and certification of such roll by them, and become part thereof with the same force and effect as if such assessment had been originally made by such assessor or other officer. If a special franchise assessed in a town is wholly within a village, the valuation fixed by the state board for the town shall also be the valuation for the village. If a part only of such special franchise is in a village, or is in a village situated in more than one tax district, it shall be the duty of the village assessors to ascertain and determine what portion of the valuation of such franchise, as the same has been fixed by the state board, shall be placed upon the tax roll for village purposes. The valuation apportioned to the town shall be the assessed valua-

tion for highway purposes, and in case part of such special franchise shall be assessed in a village and part thereof in a town outside a village, the commissioner of highways of the town and village shall meet on the third Tuesday in August in each year and apportion the valuation of such special franchises between such town outside the village and such village for highway purposes. In case of disagreement between them the decision of the supervisor of the town shall be final. The town assessors shall make an apportionment among school districts at the time and in the manner required by section thirty-nine of this chapter. The valuation so fixed by the state board shall be the assessed valuation on which all taxes based on such special franchise in the city, town or village for state, municipal, school or highway purposes shall be levied during the next ensuing year. It shall not be necessary for the state board of tax commissioners to give notice to any person, copartnership, association or corporation of the valuation of a special franchise located in any village for village purposes except in a case where such valuation is required to be made for such village purposes by the state board of tax commissioners. The assessors or other taxing officer, or other local officer in any city, town or village, or any state or county officer, shall on demand furnish to the state board of tax commissioners any information required by such board for the purpose of determining the value of a special franchise.

Thus amended by chap. 382, Laws of 1904; sections 2 and 3 chap. 382, Laws of 1904 are as follows

§ 2. This act shall not relate to the assessment of special franchises in the city of Buffalo made or to be made by the state board of tax commissioners in the year nineteen hundred and four for the purpose of raising the annual taxes of said city of Buffalo for the fiscal year beginning July first, nineteen hundred and four.

§ 3. Except as provided in section two hereof, this act shall take effect immediately.

#### Report to state board of tax commissioners.

§ 43. Every person, co-partnership, association or corporation subject to taxation on a special franchise, shall, within thirty days after this section takes effect, or within thirty days after such special franchise is acquired, make a written report to the

state board of tax commissioners containing a full description of every special franchise possessed or enjoyed by such person, co-partnership, association or corporation, a copy of the special law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the state board. The state board of tax commissioners may from time to time require a further or supplemental report from any such person, co-partnership, association or corporation, containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same, to the effect that the statements contained therein are true. Such board may prepare blanks to be used in making the reports required by this section. Every person, co-partnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the state board of tax commissioners within a reasonable time specified by it, shall forfeit to the people of the state the sum of one hundred dollars for every such failure and the additional sum of ten dollars for each day that such failure continues, and shall not be entitled to review the assessment by certiorari, as provided by section forty-five of this chapter.

Added by chap. 712, Laws of 1899, taking effect October 1, 1899.

#### Hearing on special franchise assessment.

§ 44. On making an assessment of a special franchise, the state board of tax commissioners shall immediately give notice in writing to the person, copartnership, association or corporation affected, stating in substance that such assessment has been made, the total valuation of such special franchise, and the valuation thereof in each city, town, village or tax district; and that



the board will meet at its office in the city of Albany on a day specified in such notice, which must not be less than twenty nor more than thirty days from the date of the notice, to hear and determine any complaint concerning such assessment. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation, by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by mailing it to him at his place of business or last known place of residence. Section thirty-six of this chapter applies so far as practicable to a hearing by the state board of tax commissioners under this section.

Added by chap. 712, Laws of 1899, taking effect October 1, 1899.

#### **Certiorari to review assessment.**

§ 45. An assessment of a special franchise by the state board of tax commissioners may be reviewed in the manner prescribed by article eleven of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; a petition for a writ of certiorari to review the assessment must be presented within fifteen days after the completion and filing of the assessment roll, and the first posting or publication of the notice thereof as required by law. Such writ must run to and be answered by said state board of tax commissioners and no writ of certiorari to renew any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or judge granting the writ. An adjudication made in the proceeding instituted by such writ of certiorari shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. The state board of tax commissioners on filing with the city, town or village clerk a statement of the valuation of a special franchise, shall give to the person, co-partnership, association

or corporation affected written notice that such statement has been filed, and such notice may be served on a co-partnership, association or corporation by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence.

Thus amended by chap. 254, Laws of 1900.

#### Deduction from special franchise tax for local purposes.

§ 46. If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, co-partnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, co-partnership, association, or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, shall be deducted from any tax based on the assessment made by the state board of tax commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, co-partnership, association, or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year

ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax roll to the person, copartnership, association or corporation affected the amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law.

Added by chap. 712, Laws of 1899, taking effect October 1, 1899.

#### Special franchise tax not to affect other tax.

§ 47. The imposition or payment of a special franchise tax as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or franchise tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property subject to a special franchise tax situated in, upon, under or above any street, highway, public place or public waters, as described in subdivision three of section two shall not be taxable except upon the assessment made as herein provided by the state board of tax commissioners.

Added by chap. 712, Laws of 1899, taking effect October 1, 1899.

### ARTICLE III.

#### EQUALIZATION OF ASSESSMENT AND LEVY OF TAX

#### Statement of taxes upon certain corporations by clerk of supervisors.

§ 57. The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county treasurer, a statement showing the names, valuation of property and the amount of tax of every railroad corporation and

telegraph, telephone and electric-light line in each tax district in the county, and on refusal or neglect so to do, shall forfeit to the county the sum of one hundred dollars, to be sued for by the district attorney in the name of the county.

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#### ARTICLE IV.

#### COLLECTION OF TAXES.

\* \* \* \* \*

##### Notice to non-residents.

§ 70a. A person who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in a town in which he is not actually a resident may file with the town clerk of such town a notice stating his name, residence and post-office address, a description of the premises sufficient to identify the same, and if situated in a village or school district, the name of such village and number and designation of such school district. The town clerk shall, within five days after the delivery of the warrants for the collection of taxes in such tax districts, furnish to the collectors of the town, and the collector of each village and school district in which such real property is situated, and such collectors shall within such time apply for, a transcript of all notices so filed, and such collectors shall within five days after the receipt of such transcripts mail to each person filing such notice, at the post-office address stated therein, a statement of the amount of taxes due on said property. Upon the filing of such notice the town clerk shall be entitled to receive a fee of one dollar from the person offering such notice, which shall be in full for all services rendered hereunder.

Added by chap. 338, Laws of 1903.

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##### Payment of taxes by railroad and certain other corporations.

§ 73. Any railroad, telegraph, telephone or electric-light company may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax,

with one per centum fees, to the county treasurer, who shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time.

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## ARTICLE IX.

### CORPORATION TAX.

\* \* \* \* \*

#### Organization tax.

§ 180. Every stock corporation incorporated under any law of this state shall pay to the state treasurer a tax of one-twentieth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Provided, that in no case shall such tax be less than one dollar. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Except in the case of a railroad corporation neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the state treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to building, mutual loan, accumulating fund and cooperative associations. A railroad corporation need not pay such tax at the time of filing its cer-

tificate of incorporation, but shall pay the same before the railroad commissioners shall grant a certificate, as required by the railroad law, authorizing the construction of the road as proposed in its articles of association, and such certificate shall not be granted by the board of railroad commissioners until it is furnished with a receipt for such tax from the state treasurer.

Thus amended by chap. 448, Laws 1901.

See section 59, Railroad Law, *ante*.

#### License tax on foreign corporations.

§ 181. Every foreign corporation, except banking corporations, fire, marine, casualty and life insurance companies, cooperative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the state treasurer, for the use of the state, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital stock employed by it within this state, during the first year of carrying on its business in this state; and if any year thereafter any such corporation shall employ an increased amount of its capital stock within this state, the same license fee shall be due and payable upon any such increase. The tax imposed by this section on a corporation not heretofore subject to its provisions shall be paid on the first day of December, nineteen hundred and one, to be computed upon the basis of the amount of capital stock employed by it within the state during the year preceding such date, unless on such date such corporation shall not have employed capital within the state for a period of thirteen months in which case it shall be paid within the time otherwise provided by this section. No action shall be maintained or recovery had in any of the courts in this state by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the state, or if at the time this section takes effect such a corporation has been engaged in business within this state

for more than twelve months, without obtaining such receipt within thirty days after such tax is due.

Thus amended by chap. 558, Laws of 1901.

See chap. 240, Laws of 1895, *ante*.

§ 182. Every corporation, joint stock company or association incorporated, organized or formed under, by or pursuant to law in this state, shall pay to the state treasurer annually an annual tax to be computed upon the basis of the amount of its capital stock employed within this state, and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year, ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within this state bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within this state. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto, a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par

value of which the dividend or dividends made or declared did not amount to six per centum; provided, however, that a street surface railroad corporation or a steam railroad corporation, or an elevated railroad corporation owning in a city a street surface railroad or an elevated railroad not operated by steam, in cases where the street surface roads or elevated roads of said owning corporations are operated by another street surface railroad corporation under a lease or otherwise, in so far as the dividends made and declared upon the capital stock of the said owning corporations shall be paid from the gross earnings of the said operating corporation in the form of rent or otherwise, shall only be required under this section to pay a tax of three per centum upon the dividends declared and paid from the moneys received in the form of rent or otherwise from the operating company in excess of four per centum upon the amount of its capital stock, provided, however, that nothing in this section shall relieve the said operating company of any of the liabilities imposed by section one hundred and eighty-five of this chapter. Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.

Thus amended by chap. 558, Laws of 1901.

#### Certain corporations exempt from tax on capital stock.

§ 183. Banks, savings banks, institutions for savings, title guaranty, insurance or surety corporations, every trust company incorporated, organized or formed, under, by or pursuant to a law of this state, and any company authorized to do a trust company business solely or in connection with any other business, under a general or special law of this state, laundry corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corpora-



tions, wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. But such a laundrying, manufacturing or mining corporation shall not be exempted from the payment of such tax, unless at least forty per centum of the capital stock of such corporation is invested in property in this state and used by it in its laundrying, manufacturing or mining business in this state.

Thus amended by chap. 558, Laws of 1901.

**Additional franchise tax on transportation and transmission corporations and associations.**

§ 184. Every corporation and joint-stock association formed for steam surface railroad, canal, steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the state, which shall include its gross earnings from its transportation or transmission business originating and terminating within this state, but shall not include earnings derived from business of an interstate character. All settlements\* for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section six of chapter three hundred and sixty-one of the laws of eighteen

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\*So in original.

value of which the dividend or dividends made or declared did not amount to six per centum; provided, however, that a street surface railroad corporation or a steam railroad corporation, or an elevated railroad corporation owning in a city a street surface railroad or an elevated railroad not operated by steam, in cases where the street surface roads or elevated roads of said owning corporations are operated by another street surface railroad corporation under a lease or otherwise, in so far as the dividends made and declared upon the capital stock of the said owning corporations shall be paid from the gross earnings of the said operating corporation in the form of rent or otherwise, shall only be required under this section to pay a tax of three per centum upon the dividends declared and paid from the moneys received in the form of rent or otherwise from the operating company in excess of four per centum upon the amount of its capital stock, provided, however, that nothing in this section shall relieve the said operating company of any of the liabilities imposed by section one hundred and eighty-five of this chapter. Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.

Thus amended by chap. 558, Laws of 1901.

#### Certain corporations exempt from tax on capital stock.

§ 183. Banks, savings banks, institutions for savings, title guaranty, insurance or surety corporations, every trust company incorporated, organized or formed, under, by or pursuant to a law of this state, and any company authorized to do a trust company business solely or in connection with any other business, under a general or special law of this state, laundry corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corpora-

tions, wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. But such a laundrying, manufacturing or mining corporation shall not be exempted from the payment of such tax, unless at least forty per centum of the capital stock of such corporation is invested in property in this state and used by it in its laundrying, manufacturing or mining business in this state.

Thus amended by chap. 558, Laws of 1901.

**Additional franchise tax on transportation and transmission corporations and associations.**

§ 184. Every corporation and joint-stock association formed for steam surface railroad, canal, steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the state, which shall include its gross earnings from its transportation or transmission business originating and terminating within this state, but shall not include earnings derived from business of an interstate character. All settlements\* for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section six of chapter three hundred and sixty-one of the laws of eighteen

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\*So in original.

hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

**Franchise tax on elevated railroads or surface railroads not operated by steam.**

§ 185. Every corporation, joint-stock company or association operating any elevated railroad or surface railroad not operated by steam shall pay to the state for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity within this state, an annual tax which shall be one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association. Any corporation, joint-stock company or association taxed under this section which has paid a tax to the state for the year ending November first, eighteen hundred and ninety-five, under section three of chapter five hundred and forty-two of the laws of eighteen hundred and eighty, as amended by chapter five hundred and twenty-two of the laws of eighteen hundred and ninety, shall be credited by the comptroller with one-third of the amount so paid in computing the taxes to be paid for the year ending June thirtieth, eighteen hundred and ninety-six.

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#### **Reports of corporations.**

§ 189. Corporations liable to pay a tax under this article shall report as follows:

1. Corporations paying franchise tax.—Every corporation association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business

on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. Transportation and transmission corporations.—Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this state.

3. Elevated and surface railroad corporations.—Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

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Value of stock to be appraised.

§ 190. In case no dividend has been declared, by a corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company, shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than

six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid to the state.

Further requirements as to report of corporations.

§ 191. Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

Powers of comptroller to examine into affairs of corporations.

§ 192. In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the state from such corporation, association, joint-stock company, person or partnership. The comptroller shall also

have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the state, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

#### Notice of statement of tax; interest.

§ 193. Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated shall bear interest upon the total amount found due thereon to the state, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

#### Payment of tax and penalty for failure.

§ 194. A tax imposed by section one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on

elevated railroads or surface railroads not operated by steam shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven of this chapter on an insurance corporation shall be due and payable into the state treasury on or before the first day of June in each year. A tax imposed by section one hundred and eighty-seven-a or one hundred and eighty-seven-b shall be due and payable into the state treasury on or before the first day of September in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint stock company, person or partnership, liable to pay the tax, shall pay into the state treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

Thus amended by chap. 558, Laws of 1901.

#### Revision and readjustment of accounts by comptroller.

§ 195. The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, associa-



ion or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law, and the facts and charge or credit, as the case may require, the difference if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. Such credit, whether allowed before or after the passage of this act, may be, by the person, partnership, company, association or corporation in whose favor it is allowed, assigned to a person, partnership, company, association or corporation liable to pay taxes under article nine of this act and the assignee of the whole or any part of such credit on filing with the comptroller such assignment shall thereupon be entitled to credit on the books of the comptroller for the amount thereof on the current account for taxes of such assignee in the same way and with the same effect as though the credit had originally been allowed in favor of such assignee. The comptroller shall forthwith send written notice of his determination upon such application to the applicant, and to the attorney-general, which notice, may be sent by mail to his post-office address.

Thus amended by chap. 642, Laws of 1903.

#### Review of determination of comptroller by certiorari.

§ 196. The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the supreme court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on

behalf of the people of the state. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the supreme court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the supreme court upon any such review, an appeal to the court of appeals may be taken by either party.

#### Regulations as to such writ of certiorari.

§ 197. No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges, audited and stated in such account, must be deposited with the state treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges, which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

#### Warrant for the collection of taxes.

§ 198. After the expiration of thirty days from the sending by the comptroller of a notice of a statement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the state treasurer, if an appeal or other proceeding have been taken to review the same, and the undertaking given as provided in this article, the comp-

trroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the state treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

#### Information of delinquents.

§ 199. It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint-stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the state, with such information as may be in his possession as may lead to the recovery of any taxes due the state therefrom. If, in his opinion, the interests of the state require it, the comptroller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such report and such

services, as shall have been agreed upon between such person and the comptroller or attorney-general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

**Action for recovery of taxes; forfeiture of charter of delinquent corporation.**

§ 200. An action may be brought by the attorney-general, at the instance of the comptroller, in the name of the state, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the attorney-general, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled.

**Reports to be made by the secretary of state.**

§ 201. The secretary of state shall transmit on the first day of each month to the comptroller, a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this state, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the state. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of state shall make

like reports to the comptroller whenever required by him relating to any such corporations whose certificates have been filed or to whom a certificate of authoirty has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

#### Exemptions from other state taxation.

§ 202. The personal property of every corporation, company, association or partnership, taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, and the personal property of every corporation taxable under section one hundred and eighty-seven-a of this article, other than for an organization tax, and as provided in chapter thirty-seven of the general laws, shall be exempt from assessment and taxation for all other purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article. The owner and holder of stock in an incorporated trust company liable to taxation under the provisions of this act shall not be taxed as an individual for such stock.

Thus amended by chap. 172, Laws of 1902.

#### Application of taxes.

§ 203. The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

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## ARTICLE XI.

## PROCEDURE.

## Contents of petition.

§ 250. Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that the assessment has been made at a higher proportionate valuation than the assessment of other property on the same roll by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

## Allowance of writ of certiorari.

§ 251. Such petition must be presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ shall be returnable to a special term of the supreme court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or

other persons to whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

#### Return of writ.

§ 252. The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the value of the property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

#### Proceedings upon return.

§ 253. If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if illegal, to be stricken from the roll, or if erroneous or unequal, it may order a re-assessment of the property of the petitioner, or the correction of his assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court, that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. A new assessment or correction of an assessment made by order of the court shall have the same force and effect as if it had been so made by the proper officers within the time prescribed by law for making such assessment.

**Costs.**

§ 254. Costs shall not be allowed against the officers whose proceedings may be reviewed under any such writ unless it shall appear to the court that they acted with gross negligence or in bad faith or with malice in making the assessment complained of. If the writ shall be quashed or the assessment confirmed, or if the assessment complained of shall be reduced by an amount less than half the reduction claimed before the assessing officers costs and disbursements shall be awarded against the petitioner. If the assessment shall be reduced by an amount greater than half the reduction claimed before the assessing officers, costs and disbursements shall be awarded against the tax district represented by the officers whose proceedings may be reviewed. The costs and disbursements shall not exceed those taxable in an action upon the trial of an issue of fact in the supreme court, except that if evidence shall be taken there shall be included in the taxable costs and disbursements the expense of furnishing to the court or to the referee a copy of the stenographer's minutes of the evidence taken.

Thus amended by chap. 281, Laws of 1905; sections 2 and 3 of said chapter being as follows:

§ 2. This amendment shall not apply to the proceedings under any writ granted prior to the first day of July, nineteen hundred and five.

§ 3. This act shall take effect July first, nineteen hundred and five.

**Appeals.**

§ 255. An appeal may be taken by either party from an order, judgment or determination under this article as from an order, and it shall be heard and determined in like manner as appeals in the supreme court from orders. All issues and appeals in any proceeding under this article shall have preference over all other civil actions and proceedings in all courts.

**Refund of tax paid upon illegal, erroneous or unequal assessment.**

§ 256. If in a final order in any such proceeding it shall be ordered or adjudged that the assessment complained of was illegal, erroneous or unequal, and such order shall not be made in time to enable the assessors or other officers to make a new



or corrected assessment for the use of the board of supervisors, then at the first annual session of the board of supervisors after such correction there shall be audited and allowed to the petitioner and included in the tax levy of such town, village or city, made next after the entry of such order, and paid to the petitioner, the amount paid by him, in excess of what the tax would have been if the assessment had been made as determined by such order of the court, together with interest thereon from the date of payment. In case the amount deducted from such assessment by such order exceeds ten thousand dollars, so much thereof as shall be refunded by reason of such corrected assessment, other than the proportion or percentage thereof collected for such town, village or city purposes, shall be levied upon the county at large and paid to the petitioner without further audit. The board of supervisors shall audit and levy upon each town, village or city, the proportion or percentage of such excess of tax collected for such town, village or city purposes, which shall be collected and paid to the petitioner without other : further audit.

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supplementary proceedings to collect tax.

§ 259. If a tax exceeding ten dollars in amount levied against person or corporation is returned by the proper collector uncollected for want of personal property out of which to collect the same, the supervisor of the town or ward, or the county treasurer or the president of the village, if it is a village tax, may, within one year thereafter, apply to the court for the institution of proceedings supplementary to execution, as upon a judgment docketed in such county, for the purpose of collecting such tax and fees, with interest thereon from the fifteenth day of February after the levy thereof. Such proceedings may be taken against a corporation, and the same proceedings may thereupon be had in all respects for the collection of such tax for the collection of a judgment by proceedings supplementary to execution thereon against a natural person, and the same

costs and disbursements may be allowed against the person or corporation examined as in such supplementary proceedings but none shall be allowed in his or its favor. The tax, if collected in such proceeding, shall be paid to the county treasurer or to the supervisor of the town, and if a village tax, to the treasurer of the village. The costs and disbursements collected shall belong to the party instituting the proceedings, and shall be applied to the payment of the expense of such proceeding. The president of a village and a county treasurer shall have no compensation for any such proceeding. A supervisor shall have no other compensation except his per diem pay for time necessarily spent in the proceeding.

#### Dismissal of suits or proceedings.

§ 259-a. Where the person or corporation against whom a proceeding or suit is brought to collect a personal tax in arrears in any town or ward, village, county or city of this state is unable for want of property to pay the tax in whole or in part, or where for other reasons, upon the facts, it appears to the court just that said tax should not be paid, the court may dismiss such suit or proceeding on the payment of such part of the tax as may be just or on payment of costs.

Added by chap. 348, Laws of 1905.

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#### Attorney-general to bring action for sequestration.

§ 263. It shall be the duty of the attorney-general, on being informed by the comptroller or by the county treasurer of any county that any incorporated company refuses or neglects to pay the taxes imposed upon it, pursuant to articles one and two of this chapter, to bring an action in the supreme court for the sequestration of the property of such corporation and the court may so sequester the property of such corporation for the purpose of satisfying taxes in arrear,\* with the costs of prosecution, and may, also, in its discretion, enjoin such corporation

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\*So in original.

and further proceedings under its charter until such tax and the costs incurred in the action shall be paid. The attorney-general may recover such tax with costs from such delinquent corporation by action in any court of record.

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## \*ARTICLE XII.

Laws repealed; when to take effect.

Laws repealed.

§ 280. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

When to take effect.

§ 281. This chapter shall take effect June fifteenth, eighteen hundred and ninety-six.

## SCHEDULE OF LAWS REPEALED.

REVISED STATUTES.		SECTIONS.
Part 1, ch. 13.....		All, except § 7 of tit. VI.
Part III, ch. 8, tit. XVII.....		§§ 28, 29, 30.
LAWS OF	CHAPTER.	SECTIONS.
1835.....	11.....	All.
1836.....	461.....	All.
1841.....	341.....	All.
1842.....	154.....	All.
1842.....	318.....	All.
1845.....	180.....	29, 30, 31, 32.
1846.....	327.....	All.
1847.....	455.....	16.
1847.....	482.....	All.
1849.....	180.....	All.

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\*See articles 14 and 15 (mortgage tax and stock transfer tax), following.

LAWS OF	CHAPTER.	SECTIONS.
1851.....	176.....	All.
1851.....	371.....	All.
1852.....	46.....	All.
1852.....	282.....	All.
1853.....	69.....	All.
1853.....	406.....	All.
1853.....	469.....	All.
1854.....	393.....	All.
1855.....	37.....	All.
1855.....	83.....	All.
1855.....	327.....	All.
1855.....	427.....	All.
1856.....	183.....	All.
1857.....	7.....	All.
1857.....	456.....	All.
1857.....	536.....	All.
1857.....	585.....	All.
1858.....	110.....	All.
1858.....	357.....	All.
1859.....	312.....	All.
1860.....	209.....	All.
1862.....	194.....	All.
1862.....	285.....	1.
1865.....	453.....	All.
1866.....	136.....	All.
1866.....	528.....	All.
1866.....	820.....	All.
1867.....	361.....	All.
1867.....	694.....	All.
1868.....	575.....	All.
1869.....	859.....	All.
1870.....	280.....	All.
1870.....	325.....	All.

LAWS OF	CHAPTER.	SECTIONS.
1870.....	492.....	Extract from § 2, authorizing comp- troller to designate papers in which notice of sale of lands for non-pay- ment of taxes shall be published.
1870.....	506.....	2, 3, 4, 5.
1871.....	110.....	All.
1873.....	327.....	All.
1873.....	809.....	All.
1874.....	351.....	All.
1875.....	331.....	All.
1875.....	466.....	All.
1875.....	474.....	All.
1876.....	49.....	All.
1876.....	96.....	All.
1876.....	101.....	All.
1878.....	152.....	All.
1879.....	492.....	All.
1880.....	80.....	All.
1880.....	91.....	All.
1880.....	269.....	All.
1880.....	327.....	All.
1880.....	448.....	All.
1880.....	542.....	All.
1880.....	552.....	All.
1881.....	8.....	All.
1881.....	166.....	All.
1881.....	293.....	All.
1881.....	361.....	All.
1881.....	402.....	5.
1881.....	433.....	All.

LAWS OF	CHAPTER.	SECTIONS.
1881.....	640.....	All.
1882.....	151.....	All.
1882.....	409.....	312-327 inclusive.
1883.....	342.....	All.
1883.....	392.....	All.
1883.....	397.....	All.
1883.....	464.....	All.
1884.....	57.....	All.
1884.....	153.....	All.
1884.....	280.....	All.
1884.....	353.....	All.
1884.....	414.....	All.
1884.....	435.....	All.
1884.....	537.....	All.
1885.....	10.....	All.
1885.....	32.....	All.
1885.....	201.....	All.
1885.....	215.....	All.
1885.....	340.....	12.
1885.....	359.....	All.
1885.....	411.....	All.
1885.....	453.....	All.
1885.....	501.....	All.
1886.....	59.....	All.
1886.....	102.....	All.
1886.....	143.....	All.
1886.....	266.....	All.
1886.....	315.....	All.
1886.....	659.....	1, 2, 3, 5, 6.
1886.....	679.....	All.
1887.....	284.....	All.
1887.....	342.....	All.
1888.....	110.....	All.
1889.....	191.....	All.

LAWS OF	CHAPTER.	SECTIONS.
1889.....	193.....	All.
1889.....	353.....	All.
1889.....	462.....	All.
1889.....	463.....	All.
1889.....	469.....	All.
1889.....	563.....	All.
1890.....	145.....	All.
1890.....	174.....	All.
1890.....	206.....	All.
1890.....	497.....	All.
1890.....	522.....	All.
1890.....	553.....	All.
1890.....	556.....	All.
1891.....	163.....	All.
1891.....	211.....	All.
1891.....	218.....	All.
1892.....	196.....	All.
1892.....	202.....	1.
1892.....	266.....	All.
1892.....	347.....	All.
1892.....	399.....	All.
1892.....	463.....	All.
1892.....	477.....	All.
1892.....	529.....	All.
1892.....	565.....	All.
1892.....	661.....	All.
1892.....	668.....	All.
1892.....	713.....	All.
1892.....	714.....	All.
1893.....	199.....	All.
1893.....	498.....	All.
1893.....	525.....	All.
1893.....	704.....	All.
1893.....	711.....	All.

LAWS OF	CHAPTER.	SECTIONS.
1894.....	196.....	All.
1894.....	312.....	All.
1894.....	562.....	All.
1894.....	713.....	All.
1895.....	378.....	All.
1895.....	418.....	All.
1895.....	425.....	All.
1895.....	515.....	All.
1895.....	556.....	All.
1895.....	558.....	All.
1895.....	608.....	All.
1895.....	895.....	All.
Fisheries, Game and Forest Law.....		274.

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#### \*ARTICLE XIV.

##### MORTGAGE DEBTS SECURED BY REAL PROPERTY WITHIN THIS STATE.

###### Section 290. Definitions.

291. Situs.

292. Exemption from local taxation.

293. Exemptions.

294. Levying of tax.

295. Statement of secured indebtedness; payment of other than annual tax.

296. Payment of tax.

297. Date of payment of annual tax.

298. Computation of annual tax.

299. Preparation of lists.

300. Notice of computation of tax and filing of list.

301. Correction of list.

302. Trust mortgages.

303. Appeals.

304. Printed forms.

305. Apportionment by state board of tax commissioners.

306. Enforcement of delinquent taxes.

307. Payment over and distribution of tax.

308. Papers not to be recorded.

309. No foreclosure until taxes paid.

310. Restrictions as to provisional remedies.

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\*New article added by chap. 729, Laws of 1905.



**Section 311. Expenses of officers.**

312. Supervisory power of state board of tax commissioners and state comptroller.

313. Advance payments of taxes.

314. Optional payment—old mortgages.

**Section 290. Definitions.**—The words real property and real estate as used in this article, shall be understood to include everything a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of this state.

**§ 291. Situs.**—All debts and obligations for the payment of money, either presently or in the future, which shall at any time hereafter be secured in whole or part by mortgage of real property situated within this state, together with the mortgages securing the same, shall be deemed by all courts, authorities and officers of this state to be property within this state, and subject to be seized and sold as provided in this article. Except for the purposes of taxation, and save as provided in this article and as may be necessary fully to accomplish the purposes of this article, the transfer of and succession to said debts, obligations and securities shall continue to be governed by the common law as modified by other statutes than this.

**§ 292. Exemption from local taxation.**—Such of the debts, obligations and securities aforesaid, together with the paper writings evidencing the same, as are taxed by this article shall be exempt from taxation by counties, cities, towns, villages, school districts and other local subdivisions of this state, but not from the taxes imposed by sections twenty-four, one hundred eighty-seven, one hundred eighty-seven-a, one hundred eighty-seven-b and article ten of the tax law; but this exemption shall not be construed to impair or in any manner affect the title of any purchaser of land or real estate which may be sold for nonpayment of taxes levied by any local authority.

**§ 293. Exemptions.**—There shall be exempt from the taxes imposed by this article, bonds issued by the state or by the subdi-

visions thereof, obligations secured by mortgage to the commissioners for loaning certain moneys of the United States of the several counties of the state, and mortgage obligations the legal and beneficial ownership of which is vested, and so long only as the same shall continue to be vested, in the United States or in this state, or any corporation or association organized exclusively for charitable, religious or educational purposes; and mortgage obligations on property used exclusively for residence purposes, not exceeding in the aggregate three thousand dollars, on the same piece of property, executed by the shareholders, stockholders or members of local building, loan and savings associations incorporated or organized under the laws of this state the business operations of which shall hereafter be confined to a single city, village or town and to cities, villages and towns in this or another state adjoining the city, village or town in which its principal office is located, and given to the association of which the mortgagor or obligor is a member, so long only as the legal and beneficial ownership thereof shall continue to be held by and vested in such association, and so long only as the owner of the real property covered thereby is a stockholder, shareholder or member of the association to which the mortgage obligation is given; and all such exempt mortgages, so long only as they shall continue to be exempt, shall be entitled to be recorded and may be assigned, released and satisfied without the payment of the taxes provided for in section two hundred and ninety-six of this article. When a mortgage is a lien upon both real and personal property such proportion thereof as the value of the personal property bears to the aggregate value of the real and personal property embraced therein shall also be exempt from the taxes imposed by this article. No other debts or obligations secured, in whole or part, by mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes hereinafter imposed, by reason of anything contained in any other statute, or by reason of any provision in any private act or char-

r which is subject to amendment or repeal by the legislature, by reason of nonresidence within this state or for any other use.

§ 294. **Levying of tax.**—Subject to the provisions of section two hundred and ninety-three, a regular annual tax is hereby imposed upon each and every debt and obligation, and upon the mortgage securing the same, described in section two hundred ninety-one, except upon mortgages recorded prior to July first, nineteen hundred and five, unless the mortgage has become taxable under the provisions of section three hundred and fourteen. Such tax shall be equal to five mills on each dollar of the amount of the principal debt or obligation as the same shall be at nine o'clock ante meridian on the first day of July, nineteen hundred and six, and in each year thereafter and shall be due on said first day of July and payable as hereinafter provided. At said hour each year liens for said tax shall attach and shall be deemed to be attached by all courts, authorities and officers of this state to have attached, upon each of said debts and obligations, and upon the mortgages securing the same and upon all interest obligations and other obligations collateral thereto, and upon all future obligations entitled to the same security, and upon the titles to said debts, obligations, and securities, and upon all paper writings evidencing the same, against the legal and equitable owners of said debts, obligations and securities whoever they may be and wherever they may reside, and against all persons claiming or who may at any time claim through or under them, and against all persons entitled, or who at any time may become entitled, to the benefit of any mortgage by virtue of owning or holding any bond, note, coupon or other paper writing evidencing a debt or obligation secured thereby or who may at any time become so titled in any way whatever. Like liens shall attach for the amount of several special taxes hereinafter provided. All liens created by this article shall be enforceable as hereinafter provided. In the case of mortgages made on or after the first day of July, nineteen hundred and five, which do not contain the

statement prescribed in section two hundred and ninety-five, the rate of the regular annual tax shall be six mills on the dollar until the mortgagee files the statement provided in section three hundred and one, and thereafter the regular annual tax shall be five mills on the dollar. Executory contracts for the sale of real estate made after July first, nineteen hundred and five, under which the vendee has or is entitled to possession, shall be deemed to be mortgages for the purposes of this article, and shall be assessed at the amount unpaid on said contracts.

§ 295. **Statement of secured indebtedness; payment of other than annual tax.**—Every mortgage, made on or after said first day of July, nineteen hundred and five, shall contain at the end thereof, above the signature of the mortgagor, a statement of the amount advanced at that time on said mortgage and of the maximum amount of principal indebtedness or obligations, not including interest, taxes, assessments, water rates, insurance or other expenses made by the mortgagee to preserve the mortgage lien, which is or under any contingency may at any time be outstanding so as to be secured by the mortgage. When the mortgage shall have been delivered to and accepted by the mortgagee said statement shall thereafter at all times, and for all purposes, be binding and conclusive on both parties to the mortgage, and all persons claiming or to claim through or under them or either of them. No such mortgage not exempt under section two hundred and ninety-three nor the assignment thereof from an exempt owner to a nonexempt owner shall be accepted for record if tendered at any time after nine o'clock ante meridian of the first day of July in any year, and before the first day of the following July, unless there shall have been paid, or at the same time shall be paid, a tax at the rate of five mills per year on each and every dollar of the maximum amount aforesaid for the period between the date of the mortgage and the next succeeding first day of July, or if said mortgage by its terms falls due before the next succeeding first day of July, to the earlier due date of such mortgage. Where,

however, only a portion or none of the principal of the indebtedness secured by a mortgage has been advanced at the time of its recording, the tax imposed by this section shall be computed only on the amount advanced on the mortgage at the time of recording; but in every such case an additional tax at the rate of five-tenths of one per centum per annum on each subsequent advance of principal on such mortgage from the date of such advance up to the first day of July next ensuing, or to the earlier satisfaction of said mortgage, shall be due and payable on the thirtieth day of July following, or at the earlier satisfaction of said mortgage, as the case may be. Whenever only a portion of the principal of the indebtedness secured by a mortgage, made on or after the first day of July, nineteen hundred and five, has been advanced at nine o'clock ante meridian of any first day of July, a tax at the rate of five-tenths of one per centum per annum on each subsequent advance of principal on said mortgage from the date of such advance to the first day of July next ensuing, or to the earlier satisfaction of said mortgage, shall be due and payable on the thirtieth day of June following, or at the earlier satisfaction of said mortgage as the case may be. When the tax computed on the maximum amount of a mortgage is paid at the time of recording for a shorter period than to the first day of the following July, and the mortgage is not paid until after the date to which the tax was paid, a further tax at the rate of five-tenths of one per centum per annum on the maximum amount aforesaid to the time of filing satisfaction, or to the accrual of the next subsequent annual tax, shall be due and payable on the thirtieth day of June following, or at the earlier satisfaction of said mortgage, as the case may be. All taxes which become due on any thirtieth day of June and are not paid within thirty days thereafter shall bear interest at the rate of one per centum per month from their due date till paid. Mortgage obligations exempted from taxation by section two hundred and ninety-three on the ground of ownership shall be liable to taxation under this article from the time of any change of ownership to any person, association or corporation except the United

States, this state or one of the associations or corporations mentioned in the ownership exemption clause of section two hundred and ninety-three.

§ 296. **Payment of tax.**—The annual taxes ascertained as herein prescribed, and all other taxes imposed by this article, shall, respectively, be payable to the proper officer at the recording office where the mortgage is first offered for record in this state, until the same is satisfied of record in said office. A receipt for all taxes imposed by this article, payable at the time when the said mortgage is offered for record, must be endorsed upon the mortgage and recorded therewith, at said office and at every other recording office where the mortgage may be tendered for record.

§ 297. **Date of payment of annual tax.**—The regular annual tax imposed by section two hundred and ninety-four may be paid at any time after nine o'clock ante meridian of the first day of July in each year, and shall be payable on the first day of October in each year. Annual taxes not paid prior to the first day of November of the year in which they fall due, respectively, shall bear interest at the rate of one per centum per month from said first day of November until paid. Receipts for such payments shall be signed by the recording officer and delivered to taxpayers. The recording officer shall cause an entry thereof to be made in the proper column of the list hereinafter prescribed, and such entry of payment shall be conclusive in favor of any assignee for value of the mortgage who does not have actual notice of a default in payment of the tax so entered as paid. In the case, however, of every mortgage on which a regular annual tax becomes a lien in any year, and which mortgage is actually paid and satisfied of record on or before the thirtieth day of June following the attaching of said lien, the payment of such proportion of said annual tax as the number of months, which have in whole or in part elapsed from the preceding July first to the date of such satisfaction of record, bears to twelve months, together

with payment of any interest which may have accrued, shall be a complete payment and discharge of said annual tax on said mortgage.

§ 298. **Computation of annual tax.**—Prior to the first Monday in August, nineteen hundred and six, and of each year thereafter each recording officer shall estimate and compute the regular annual tax which accrued at nine o'clock ante meridian of the preceding first day of July, in respect of each and every mortgage of real estate on record in his office, at said hour, except mortgages which at said hour appeared by the record thereof or by the index to be satisfied or discharged, or to have been recorded prior to July first, nineteen hundred and five. Such computation shall be based upon the maximum amount, as shown on the face of the recorded mortgage, without reference to any other writing, of principal indebtedness or obligation, which is, or under any circumstances may at any time be outstanding so as to be secured by the mortgage; but if the mortgage as recorded does not purport to show such maximum amount, or refers to any other writing therefor, said computation shall be based upon an assessment of said maximum amount, to be made by the recording officer from the best sources of information obtainable, such assessed amount, however, not to be less in any case than the value of the real estate covered by the mortgage, as shown by the last completed assessment roll or as otherwise ascertained by the recording officer, after deducting therefrom the amount of any prior liens thereon.

§ 299. **Preparation of lists.**—Prior to said first Monday of August, nineteen hundred and six and each year thereafter each recording officer shall also prepare triplicate lists of all said mortgages, which lists shall identify the several mortgages by the number of the volume and page where they are recorded, and by the names of the parties, and shall contain the maximum amount on which the several computations aforesaid are based, and shall also contain the results of said computations. The exact forms of said lists for the several counties shall be prescribed by

the state board of tax commissioners so that they may accord respectively with the usages of the several recording offices; but said lists shall be substantially in the form of the schedule hereto annexed, which is hereby made a part of this act. At the time of certifying and filing, the lists shall consist of a proper filling in of the blanks in the caption and of proper entries showing the prior matters indicated in the headings of the columns of the schedule. The entries shall be arranged consecutively, according to the number of the volume and page of the record of the several mortgages, shall be numbered serially from one upwards, and shall be distinctly ruled so as to prevent confusion. In counties where the block system of indexing is now in force, the section number, in addition to the liber and page, shall be added for designation, and liber one for each section successively shall first be entered in the schedule, then liber two for each section, then liber three, and so on; and where the same mortgage is recorded in several sections, full particulars regarding it shall be entered in the proper place in the lowest numbered section in which the mortgage is recorded, and in the schedule the columns for the same mortgage, recorded in the other sections, shall simply refer to the entries of the mortgage in the lowest numbered section. Said triplicate lists shall be certified by the recording officer on said first Monday of August, and one copy forthwith filed by him in the office of the state board of tax commissioners, one copy in the office of the state comptroller and one copy in his own office. The lists so filed, shall be public records, open at all reasonable hours for public inspection. No change shall be made in the entries of any filed list except for the correction of clerical errors, and then only upon order of the state board of tax commissioners. Said board shall have power at any time, on its own motion or on application of an interested party, to cause clerical errors to be corrected by appropriate entries in the remarks column of the lists; and no formal appeal, as hereinafter prescribed, shall be required for such purpose. It shall be the duty of recording officers to report to the board all clerical errors which may be brought to their notice.



§ 300. Notice of computation of tax and filing of list.—Each recording officer shall give notice by publication of the fact that the regular annual mortgage taxes have been estimated and computed and that the triplicate lists required by law have been prepared and filed in the offices aforesaid, and that the same are open to public inspection, and that errors therein, if any, may be corrected in the modes prescribed by this article. Such notice shall be published once in each week for six consecutive weeks next succeeding said first Monday in August in the newspapers of the county designated for the publication of the session laws. In the city of New York such publication shall also be made in the City Record. The amount of annual taxes, in respect of each mortgage, shall be deemed to be conclusively and finally established on said first day of October, in accordance with the estimates contained in said lists, except as to clerical errors and except as to items in said lists in respect of which appeals to the state board of tax commissioners shall have been perfected as hereinafter provided.

§ 301. Correction of list.—At any time between nine o'clock ante meridian of the first day of July and the final establishment of the estimated tax in each year, the owner of a recorded mortgage unexempt in whole or in part whose title appears by papers recorded in the same office, may present to the recording officer, triplicate statements containing the following matters, and such other matters as the state board of tax commissioners may prescribe; first, the number of the volume and page of the record of the mortgage and names of the parties thereto; second, a memorandum of assignments of or changes in the title to the mortgage, with references to the number of the volume and page where each instrument in the chain of title is recorded; third, the maximum amount of principal indebtedness not including interest, taxes, assessments, water rates, insurance or other expenses made by the mortgagee to preserve the mortgage lien which according to the terms of the mortgage, may in any contingency, and at any time be outstanding so

as to be secured by the mortgage; fourth, facts showing that such maximum amount had at nine o'clock ante meridian of the preceding first day of July been reduced by partial payment, release or otherwise, and how much; fifth, facts showing that at said nine o'clock ante meridian of the preceding first day of July, only a part of the debts and obligations contemplated by the mortgage had ever been incurred; showing also what part; sixth, the actual amount of all principal indebtedness or obligation, which at said nine oclock ante meridian on the preceding first day of July was outstanding and secured by the mortgage; seventh, the amount of tax due in respect to said mortgage. Facts must be alleged in said triplicate statements, positively and without qualification or evasion. Said triplicate statements must be verified by the oath of the said mortgage owner, or, if accompanied by a proper power of attorney duly executed and acknowledged or proved, by his attorney in fact, and they must also be acknowledged or proved according to the laws regulating the recording of deeds. At or prior to the time of presenting said triplicate statements, said mortgage owner must deposit with the recording officer, the amount of the tax shown to be due in said statement, as security for payment of the tax if the matters set forth in the triplicate statements should be found to be correct by the recording officer; and there must be indorsed by the recording officer upon each triplicate statement a receipt for such deposit, and a separate receipt therefor given to the depositor. Money so deposited shall be deemed applied to the payment of the tax and shall discharge the same when the recording officer makes the indorsement herein-after mentioned upon said triplicate statements. If required by the recording officer said mortgage owner must also present for examination his mortgage, and any other paper upon which he relies to support any facts set forth in the triplicate statements. It shall be the duty of the recording officer, if said statements are seasonably presented, to satisfy himself by an examination of the record, as to the title of the person making the statements, and he shall examine and satisfy himself as to the other matters set forth therein, and if he finds the same correct, he shall indorse

upon the triplicate statements, substantially as follows: "Amount of taxes due at nine o'clock ante meridian on the first day of July in the year....., ascertained this.....day of....., in the year....., to be the sum of.....dollars, and deposit appropriated in payment," and such indorsement shall be conclusive evidence of the payment of the tax in full and he shall thereafter refund to the mortgage owner the balance of the deposit. He shall then forthwith file one copy in his own office, one copy in the office of the state board of tax commissioners and one copy in the office of the state comptroller. Statements so filed shall be public records and shall be arranged in the files consecutively, according to the section, if any, and number and page of the volume of the record of the mortgage to which they relate, respectively. Each statement shall be the evidence of the fact set forth therein in favor of the mortgagor, and all persons claiming through or under the mortgagor, as against the owner of the mortgage, and all persons claiming through or under him. Appropriate entries of the proceedings contemplated by this section shall be made by the recording officer in the proper columns of the lists aforesaid prior to the first day of October in each year.

§ 302. Trust mortgages.—In case of a mortgage in trust, all of the debts and obligations secured thereby, notwithstanding that they may be owned in severalty by different persons, shall be considered as an entirety so far as liability for state taxes is concerned. Except as herein otherwise provided it shall be the duty of the trust mortgagee to protect the mortgage security for the benefit of the several persons owning the debts and obligations secured by the mortgage, by paying all taxes ascertained to be due to the state, and any trust mortgagee, doing so, shall have a lien upon the mortgage security and upon the several present and future obligations secured thereby, and upon the several paper writings evidencing such security and obligations for the reimbursement of the amounts so paid, with interest at the rate of six

per centum per annum, which lien may be hypothecated by the mortgagee for loans of money and may be enforced in any appropriate manner; but no trust mortgagee shall be entitled to interest unless reasonable diligence be used to notify all persons concerned. Except in the case of trust mortgages made by corporations the terms of which require the mortgagor or the owner of the mortgaged property to pay said tax or deduct the same from the interest upon the mortgage debt, any trust mortgagee who fails to use the means provided by this section for the protection of the mortgage security shall be responsible to any obligation owner who may be aggrieved by such failure. In the case of trust mortgages made by corporations the terms of which require the mortgagor or the owner of the mortgaged property to pay the tax imposed by this article or to deduct the same from the interest upon the mortgage debt, the mortgagor or the owner of the mortgaged property, as the case may be, shall be liable for the tax and the trust mortgagee shall not be under or subject to any of the obligations and liabilities imposed by this section, and any taxes imposed by this article shall be a lien upon the mortgaged property prior to the lien of the trust mortgage as well as upon the trust mortgage and the debt and obligation thereby secured. For the purpose of obtaining information required for the statement contemplated in section three hundred and one or for the appeal contemplated in section three hundred and three, a trust mortgagee shall be entitled to a summons to be issued by the recording officer under his hand and seal of office, requiring the mortgage debtor or obligor or the owner of the mortgaged property or any person supposed to have knowledge of the facts to appear and testify before the recording officer at a time to be fixed by him, and any such mortgage debtor or obligor or owner of the mortgaged property who, being summoned, wilfully fails to appear and testify, shall be liable personally to the trust mortgagee for the tax ascertained to be due in respect of the indebtedness secured by such trust mortgage. Any owner of a bond, note, debt or obligation secured by a trust mortgage, entitled in respect thereof to a personal ex-

emption from taxation, who fails seasonably to furnish the evidence of facts establishing the right to exemption to the trust mortgagee or to the mortgagor or the owner of the mortgaged property, in the case of trust mortgages which require the mortgagor or the owner of the mortgaged property to pay the tax or to deduct the same from the interest upon the mortgage debt shall be deemed to have waived the right to exemption. On receiving such evidence the mortgage trustee or the mortgagor or the owner of the mortgaged property, as the case may be, shall claim such exemption in the mode provided in sections three hundred and one and three hundred and three; and the exemption, when established, shall enure to the benefit of the particular person entitled thereto, and not to the benefit of other holders of debts and obligations secured by the mortgage.

§ 303. Appeals.—The owner of the mortgage, the owner of the real estate upon which it is a lien real or apparent, or a person beneficially interested in either the mortgage or real estate may appeal in writing to the state board of tax commissioners from the computation or estimate of tax relating to said mortgage in any annual list, at any time after the filing of such list and prior to the next succeeding first day of October, provided that at the same time he deposits with the recording officer, at the office where the mortgage is recorded as security an amount equal to the estimated tax, such deposit to be applied to the payment of the tax when finally ascertained, and any excess then to be refunded to the appellant. Such appeals shall be in duplicate, and shall be perfected by delivering one duplicate, with a receipt by the recording officer for the deposit aforesaid indorsed thereon, to the recording officer, and by mailing the other duplicate, the same being first indorsed by the recording officer with a receipt for the deposit, to the state board of tax commissioners. No deposit shall be required when the sole ground of an appeal shall be the right to an exemption from taxation. An appellant claiming an exemption under the ownership exemption clause of section two hundred and ninety-three

must include in a single appeal all mortgages of the same list as to which the exemption is claimed. The recording officer must enter the appeal and deposit in the proper column of the list aforesaid, and such entry shall be conclusive against the state in favor of bona fide assignees for value of the mortgage. Such appeals shall be public records, open to public inspection at all reasonable hours. They shall be arranged consecutively, and according to the serial numeration of items in the list, in the files of the recording officer and of the state board of tax commissioners. The appeals shall be, respectively, conclusive evidence of any fact stated therein in all courts and proceedings as against the appellant, and all persons claiming through or under him. Each appeal must be verified by the appellant, or by his duly authorized attorney in fact, and it must contain the grounds of appeal and all facts relied on to support such grounds distinctly and positively set forth. The state board of tax commissioners shall prescribe the rules and regulations governing the hearing and determination of such appeals and shall sit at their office, in Albany, on the second Wednesday of October in each year, and they must sit on at least one day in the month of October, in each year, at a time and place to be fixed by them, in each of the cities, New York, Syracuse, Rochester and Buffalo, for the open public hearing of all such appeals, and they may in their discretion sit for such purpose at other times and places to be fixed by them. Thereafter they shall consider and determine the several appeals and ascertain the amount upon which the tax shall be computed, as to them shall seem lawful and proper, upon the matters stated in said appeals respectively, and upon any other sources of information which they deem relevant for a just ascertainment of the facts, which determination shall be final and conclusive. They shall certify their decisions from time to time, as they shall severally be made, to the state comptroller, the recording officer and to the county treasurer, or to the city chamberlain of the city of New York, who shall thereupon pay over, under the general provisions of this article, such portion

\*So in original.

of the deposit as shall have been determined to be justly due as a tax, and shall refund to the appellant the balance of the deposit; and no interest shall be charged against or allowed to said appellant. The state board of tax commissioners may take up and dispose of an appeal upon the request of the appellant, before the public hearing day aforesaid.

§ 304. Printed forms.—Forms of the statements, oaths, acknowledgments, proofs of execution, receipts, powers of attorney and recording officer's indorsements contemplated by section three hundred and one and of the appeals contemplated in section three hundred and three shall be prepared by the state board of tax commissioners and printed copies thereof shall be furnished by recording officers to persons applying therefor without charge; and the cost thereof allowed as an expense of said recording officer, and said board in its discretion may prepare and require recording officers to furnish to persons applying therefor printed forms of any other papers without charge.

§ 305. Apportionment by state board of tax commissioners.—When the real property covered by a mortgage is assessed in more than one county it shall be the duty of the state board of tax commissioners to ascertain the assessed value of the property in each county and to apportion the amount upon which the tax shall be paid to the recording officer in each of the said counties upon the basis of the relative assessments. Where the mortgage is a first lien upon real property situate in one tax district and a subsequent lien upon real property situate in another tax district it shall be their duty to apportion the amount of the tax properly to be credited to said tax districts by ascertaining the valuation of each parcel as appears from the last preceding assessment roll of the tax district in which such parcel is located after deducting therefrom the taxable amount of any prior lien. When the real property covered by a mortgage is located partly within the state and partly without the state it shall be the duty of the state board of tax commissioners to determine what proportion shall be taxable under this article by determining the relative value of the mortgaged premises lying within this state

as compared to the total value of the entire mortgaged premises, taking into consideration in so doing the amount of all prior incumbrances upon such premises or any portion thereof. Where the mortgage is a lien upon both real and personal property it shall be the duty of the state board of tax commissioners to determine the amount of property exempt under section two hundred ninety-three. The state board of tax commissioners shall adopt rules to govern their procedure and the manner of taking evidence in these matters and may require certified statements to be furnished either by boards of assessors or recording officers of the respective counties in relation thereto, and immediately upon making their determination they shall file a certificate thereof with the recording officer of each county within which a portion of the mortgaged premises are\* situated; and a minute of such determination shall be entered in the remark column of the annual list aforesaid opposite to the entries relating to the said mortgage, and whenever the tax upon a mortgage secured by real estate assessed in two or more counties shall have been paid, as provided by sections two hundred and ninety-five and two hundred and ninety-six, to the recording officer at the recording office where the mortgage was first offered for record it shall also be the duty of the state board of tax commissioners to equitably apportion between the respective counties the amount upon which such tax is to be computed and to file the certificate of their determination with the recording officer, and thereupon said recording officer shall pay over to the several county treasurers of the respective counties or to the chamberlain of the city of New York the sums fixed by said certificate of determination.

§ 306. Enforcement of delinquent taxes.—Every debt or obligation, and the mortgage security therefor, in respect of which any tax provided for in this article other than the regular annual tax shall not have been paid prior to the first day of December after it has become due and payable, or in respect of which any regular annual tax shall not have been paid prior to the first

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\*So in original.



Monday of January following the estimate of such tax made by the recording officer in manner aforesaid, shall, unless an appeal shall have been duly taken, and perfected be deemed delinquent, and shall be liable to seizure and sequestration and sale. And thereafter no payment made upon such mortgage debt shall be valid as against the lien of the tax; and the owner of the mortgaged premises, or a person liable upon the mortgage, debt or contract, may pay such tax together with any penalty which shall have accrued, and the amount so paid shall be credited as a valid payment upon the amount then owing upon such mortgage. It shall thereupon be the duty of the recording officer of the county where the same is payable to file with the county treasurer of that county and in the counties of New York, Kings, Queens and Richmond with the chamberlain of the city of New York, a certificate containing a copy of the mortgage and all the assignments thereof if the same are matters of record in his office, and, if not, such facts in relation thereto as may be known to him, together with a statement of the amount of principal indebtedness unpaid at the time when the tax thereon was computed, as shown by the records of his office, and the amount of tax thereon due and unpaid. And it shall be the duty of the county treasurer or the chamberlain of the city of New York to advertise once a week for six weeks the delinquent debt and mortgage security therefor, for sale, at public auction to the highest bidder, in a newspaper published in the county where the tax is payable, but if no newspaper be published therein then in a newspaper of general circulation therein, by notice describing briefly such delinquent debt and mortgage security therefor and reciting that the tax was returned and remains unpaid, and stating that at a time and place to be specified in the notice the delinquent debt and mortgage security therefor and all evidences thereof, and the interests of all persons therein, direct or remote, will be exposed for sale at public auction and sold to the highest bidder. At the time and place to be specified in said notice for such sale the county treasurer, or city chamberlain of the city of New York shall offer the said delinquent debt, the mortgage

as compared to the total value of the entire mortgaged premises, taking into consideration in so doing the amount of all prior incumbrances upon such premises or any portion thereof. Where the mortgage is a lien upon both real and personal property it shall be the duty of the state board of tax commissioners to determine the amount of property exempt under section two hundred ninety-three. The state board of tax commissioners shall adopt rules to govern their procedure and the manner of taking evidence in these matters and may require certified statements to be furnished either by boards of assessors or recording officers of the respective counties in relation thereto, and immediately upon making their determination they shall file a certificate thereof with the recording officer of each county within which a portion of the mortgaged premises are\* situated; and a minute of such determination shall be entered in the remark column of the annual list aforesaid opposite to the entries relating to the said mortgage, and whenever the tax upon a mortgage secured by real estate assessed in two or more counties shall have been paid, as provided by sections two hundred and ninety-five and two hundred and ninety-six, to the recording officer at the recording office where the mortgage was first offered for record it shall also be the duty of the state board of tax commissioners to equitably apportion between the respective counties the amount upon which such tax is to be computed and to file the certificate of their determination with the recording officer, and thereupon said recording officer shall pay over to the several county treasurers of the respective counties or to the chamberlain of the city of New York the sums fixed by said certificate of determination.

§ 306. Enforcement of delinquent taxes.—Every debt or obligation, and the mortgage security therefor, in respect of which any tax provided for in this article other than the regular annual tax shall not have been paid prior to the first day of December after it has become due and payable, or in respect of which any regular annual tax shall not have been paid prior to the first

\*So in original.

Monday of January following the estimate of such tax made by the recording officer in manner aforesaid, shall, unless an appeal shall have been duly taken, and perfected be deemed delinquent, and shall be liable to seizure and sequestration and sale. And thereafter no payment made upon such mortgage debt shall be valid as against the lien of the tax; and the owner of the mortgaged premises, or a person liable upon the mortgage, debt or contract, may pay such tax together with any penalty which shall have accrued, and the amount so paid shall be credited as a valid payment upon the amount then owing upon such mortgage. It shall thereupon be the duty of the recording officer of the county where the same is payable to file with the county treasurer of that county and in the counties of New York, Kings, Queens and Richmond with the chamberlain of the city of New York, a certificate containing a copy of the mortgage and all the assignments thereof if the same are matters of record in his office, and, if not, such facts in relation thereto as may be known to him, together with a statement of the amount of principal indebtedness unpaid at the time when the tax thereon was computed, as shown by the records of his office, and the amount of tax thereon due and unpaid. And it shall be the duty of the county treasurer or the chamberlain of the city of New York to advertise once a week for six weeks the delinquent debt and mortgage security therefor, for sale, at public auction to the highest bidder, in a newspaper published in the county where the tax is payable, but if no newspaper be published therein then in a newspaper of general circulation therein, by notice describing briefly such delinquent debt and mortgage security therefor and reciting that the tax was returned and remains unpaid, and stating that at a time and place to be specified in the notice the delinquent debt and mortgage security therefor and all evidences thereof, and the interests of all persons therein, direct or remote, will be exposed for sale at public auction and sold to the highest bidder. At the time and place to be specified in said notice for such sale the county treasurer, or city chamberlain of the city of New York shall offer the said delinquent debt, the mortgage

security therefor, and all evidences thereof, and the interests of all persons therein, direct or remote for sale, and sell the same by public auction to the highest bidder, and shall execute under his hand and seal and deliver to such purchaser an assignment thereof, which assignment shall briefly describe the interest sold and the instrument by which the interest is created, and the liber and page and date of record thereof. And unless within six months from the date of such assignment any interested party shall tender to said county treasurer or city chamberlain for the use of the purchaser the amount of money paid by such purchaser at such sale together with interest thereon at the rate of one per centum a month to the date of tender the purchaser at such sale shall be vested with the absolute and beneficial ownership of the property sold, and may have all remedies at law or in equity for the enforcement of his rights as such owner. Said county treasurer or the chamberlain of the city of New York shall make a proper record of the amount of any moneys received by him for the benefit of the purchaser on such sale, and shall cancel the record of such sale in his office, and file with the recording officer a certificate stating the fact of such redemption. Said recording officer shall thereupon enter a minute of such redemption in the remark column of the annual list aforesaid opposite to the entries relating to the said mortgage. Such purchaser or his legal representative shall be entitled to receive the money so deposited for his benefit from said county treasurer on production of the assignment theretofore executed and delivered to said purchaser by said county treasurer or the chamberlain of the city of New York. From the moneys to be received at such sale, said officer shall pay the tax, fees, interest and expenses which shall have been incurred by him in making the sale, the remainder or surplus thereof shall be held by him for whom it may concern, and it may be recovered by any or all persons entitled thereto in the same manner, upon the same proofs, and by like procedure, as if such surplus had resulted and been paid to the county treasurer upon a sale in foreclosure of the interests sold as aforesaid in an

action in the supreme court of the state of New York. Upon the completion of the publication of the notice of sale, the seizure of the mortgage and of all debts and obligations secured thereby shall be deemed fully consummated so as to confer upon said officer full jurisdiction to sell and transfer the same, and in no case shall the manucaption of any indenture bond or paper writing or any notice to the mortgage owner other than the publication of the notice of sale aforesaid be deemed essential to the valid sale and assignment thereof. It shall be lawful for the county treasurer or the chamberlain of the city of New York aforesaid at any sale conducted under this article to become the purchaser and the assignment shall thereupon be made to the county or to the city of New York in the form and manner prescribed for individuals. All such purchases shall be subject to the same rights of redemption and the procedure thereafter shall be the same as in the case of purchases by individuals.

§ 307. **Payment over and distribution of taxes.**—Upon the first day of each month the recording officer of each county shall pay over to the county treasurer of said county, and in the counties of New York, Kings, Queens and Richmond to the chamberlain of the city of New York all moneys received during the preceding month upon account of taxes paid to him as herein described, after deducting the necessary expenses of his office as provided in section three hundred and eleven, except taxes paid upon a mortgage which under the provisions of section three hundred and five is to be apportioned by the state board of tax commissioners between several counties, and except moneys paid into his hands as security upon appeal, which taxes and money shall be paid over by him as provided by the determination of said state board of tax commissioners within five days after the filing of said determination in his office. The county treasurer of each county and in the counties of New York, Kings, Queens and Richmond the city chamberlain of the city of New York shall on the first day of

January, nineteen hundred and six, and quarterly thereafter, after having deducted the necessary expenses of his office provided in section three hundred and eleven, and the amount of any deposit made under the provisions of section three hundred and three, where the appeal remains undetermined, transmit one-half of this net amount collected under the provisions of this article to the state treasurer and shall receive from the state treasurer a receipt therefor countersigned by the comptroller. And the remaining portion thereof in the counties of New York, Kings, Queens and Richmond shall be paid into the general fund of the city of New York and be applied to the reduction of taxation, and in the other counties of the state the remaining portion shall be held by the respective county treasurers subject to the order of the board of supervisors as hereinafter provided. Prior to the first day of December in each year the county clerk shall cause to be prepared a list containing a description of all mortgages upon which taxes have been paid by a reference to the date of each mortgage, the name of the mortgagor and mortgagee, the amount of the principal debt upon which the tax was paid together with the book and page where said mortgage is recorded, together with the town, city or village in which the mortgaged premises are assessed, and if assessed in two or more tax districts the amount apportioned to each tax district by the state board of tax commissioners, and shall file the statement in his office and shall furnish a copy thereof to the clerk of the board of supervisors, and another copy thereof to the county treasurer. The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from the statement filed with their clerk by the county clerk the location of the mortgaged property with respect to the several tax districts and the amount of tax properly to be credited to each town, city and village and of the sum so credited to each town which does not contain within its boundaries an incorporated village or portion thereof and to each city other than the city of New York, one-half thereof shall be

applicable to the payment of school taxes and one-half thereof shall be applicable to the payment of state, county and city, or town expenses; where the town contains within its limits a city, incorporated village, or portion thereof, the supervisor shall apportion to the city, village or villages so much of the share credited to the said town as the assessed value of said city, village or portion thereof bears to twice the total assessed valuation of the town, and one-half of the remaining balance shall be applicable to the payment of state, county and town taxes, and one-half to the payment of school taxes. The board of supervisors of each county, on or before the first day of December each year shall determine the respective sums applicable hereunder to each of the foregoing purposes and shall issue their warrant for the payment to the city or town collector of the amount payable to said city or town, and their warrant for the payment to the village treasurer of the sum of money to which the village shall be entitled, and for the payment to the city official having authority to receive the other moneys raised by tax for school purposes in said municipality, and to the supervisor of each town of the amount to which the town is entitled for the payment of school taxes; and it shall be the duty of said supervisor of a town to apportion the sum so paid to him for school purposes between the several school districts upon the basis of the aggregate days' attendance as appears from the statement filed with him by the school commissioners in March of each year and shall notify the trustee or trustees of said school district of the amount standing to the district's credit in his hands, which sum shall be deducted from the next annual school levy of said district and shall be paid by the supervisor to the collector of the school district as soon as the said collector shall have received his warrant for the collection of the next annual tax.

§ 308. Papers not to be recorded.—After July first nineteen hundred and five, no recording officer shall record or accept for record any satisfaction piece, release, certificate or other paper

pertaining to any mortgage recorded after that date, other than an assignment, the statement referred to in section three hundred and one, a paper issuing from a court, or from the state board of tax commissioners, or from the state comptroller, or in any proceeding to enforce the payment of the tax imposed by this article until all taxes imposed by this article which shall have accrued with respect to such mortgage shall have been first paid. But the recording of any mortgage, release, certificate, or other paper, or the filing of any satisfaction piece pertaining to any mortgage by said recording officer, shall be conclusive in favor of any innocent purchaser for value of any interest in the land covered by said mortgage, and any such innocent purchaser for value shall be entitled to rely upon such record or filing as evidence that all such taxes have been paid. Any mortgagor or person claiming under him may pay the taxes imposed by this article and which accrued prior to payment of the mortgage in order to obtain the recording of a satisfaction piece or release, and shall have a cause of action to recover the amount of taxes so paid, with interest at the rate of ten per centum per annum, against the owner of the mortgage at the time of satisfaction or release, and any court before whom any such cause of action shall be brought shall allow him, by way of additional costs, reasonable counsel and attorney's fees to cover the entire litigation in all courts. The production of a receipt for any tax imposed by this article shall be satisfactory proof of payment.

§ 309. No foreclosure until taxes paid.—After nine o'clock ante meridian on the first day of July in the year nineteen hundred and five;\* no final order or decree shall be made or entered by any judge or court in any case based upon a mortgage of real estate located within this state, given, or executed subsequent to July first nineteen hundred and five, or upon any debt or obligation secured by such a mortgage, until the court or judge shall first have been satisfied that all taxes and the interest thereupon in respect of such mortgage debt or obligation have been paid, except in an action or proceeding to enforce the payment of the taxes

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\*So in original.



imposed by this article. Any contract or agreement in respect to any mortgage obligation or deed of trust, other than mortgage obligations and deeds of trust executed by corporations, by which the mortgagor shall agree or be bound to pay the tax or any part thereof imposed by this article, shall be usurious and void, and no judgment shall be obtained in any court of this state upon any obligation or mortgage subject to the tax imposed by this article when it shall be made to appear that there has at any time been any agreement that the mortgagor should pay such tax or any part thereof, or that the mortgagor has made any payment in pursuance of any such agreement.

§ 310. **Restriction as to provisional remedies.**—No action shall be brought nor shall any proceeding be instituted in any court of this state in respect to the making of any assessment, the collection of any tax, the recording of any mortgage or other paper or the making or filing of any list referred to in this article, or in respect to the performance of any act herein required of any official, until after a review or decision by the state board of tax commissioners in respect thereto as in this article provided. Nothing in this article shall be construed as impairing the liability of any officer to any person aggrieved for damages arising out of any illegal or fraudulent act or neglect on the part of such officer.

§ 311. **Expenses of officers.**—Recording officers and county treasurers and the chamberlain of the city of New York, shall severally be entitled to receive, all their necessary expenses for the purposes of this act, including printing, advertising, costs of lists, hire of clerks and assistants, being first approved and allowed by the state board of tax commissioners, which shall be retained by them out of the moneys coming into their hands. Recording officers and their deputies shall administer gratuitously any oath required by this statute. Within ten days after this act takes effect, it shall be the duty of each recording officer to submit to the state board of tax commissioners a form of the list aforesaid adapted to the usages of his office,

together with an estimate of the cost of preparing and securely binding the same in convenient volumes, and together with an estimate of the probable number of mortgages to be entered therein the first year, and the expense per mortgage of making such entries, and upon approval of the form, as it was proposed or as it may be corrected, by the state board, said recording officer shall forthwith obtain the necessary lists for the first year, so that the work of preparing the same for certification at the time fixed in this article may not be delayed.

§ 312. Supervisory power of state board of tax commissioners and state comptroller.—The state board of tax commissioners shall have general supervisory power over all recording officers in respect of the duties imposed by this article and they may make such rules and regulations for the government of recording officers in respect to the matters provided for in this article as they may deem proper, provided that such rules and regulations shall not be inconsistent with this or any other statute. They shall see that recording officers cause the lists aforesaid to be seasonably prepared and securely bound, and they may prescribe the forms of advertisements, receipts, appeals and other papers and records required by this statute. The state comptroller shall have general supervisory power over all county treasurers and the chamberlain of the city of New York in respect to the duties imposed upon them by this article, and may make such rules and regulations, not inconsistent with this or any other statute, for the government of said county treasurers and chamberlain as he deems necessary and appropriate to secure a due accounting for all taxes and moneys collected or received pursuant to any provision of this article; and may be represented by counsel before the state board of tax commissioners upon any appeal from the determination of the original recording officer. All recording officers and county treasurers, and the chamberlain of the city of New York, shall furnish such bond, conditioned for the faithful and diligent discharge of the duties required of them respectively by this

article, to the people of the state, within such time, with such sureties and in such penal amount, not exceeding twenty-five thousand dollars, as the state comptroller may prescribe.

§ 313. Advance payments of taxes.—Any person may at his option at any time present to any county treasurer or to the chamberlain of the city of New York, triplicate statements in a form to be prescribed by the state board of tax commissioners, containing a specific and identifying description of any serial bond or bonds secured by mortgage heretofore or hereafter executed by any corporation and at the same time pay to the county treasurer or chamberlain of the city of New York a tax upon the bond or bonds so described at the rate per year of five mills on the dollar of the principal or par of said bond or bonds for as many years not less than three commencing on the following first day of July as may be desired. A discount for the present payment at the rate of five per centum shall be allowed. The treasurer or chamberlain shall certify upon each triplicate statement in a form to be prescribed by the state board of tax commissioners the date and amount of the payment and the years covered thereby and shall deliver one triplicate to the person making the payment, cause another to be filed in the state comptroller's office, and file the third in an orderly way in his own office. Thereafter, during the years covered by the payment, such bond or bonds and the obligations or indebtedness represented thereby, shall be exempt from all other taxation, in the manner and to the extent only as provided in section two hundred and ninety-two of this article. Executors and trustees, unless expressly prohibited by the will or other instrument creating the trust, shall be deemed to be authorized to avail themselves of this option, for the benefit of the beneficiaries of the estates or trusts which they represent.

§ 314. Optional payment on prior mortgages.—Any person who is the owner of a mortgage heretofore executed, and subject to taxation under sections one to ninety-four, inclusive, of this act, may at his option at any time present to the recording

officer of any county where said mortgage is recorded a triplicate statement, in a form to be prescribed by the state board of tax commissioners, specifying the date of the mortgage, the date of record, the property covered, and the amount secured by said mortgage; one of which statements shall be filed in the office of said recording officer; one of said statements with a copy of the indorsement of filing shall be delivered to the owner of the mortgage, and the other shall be filed with the state board of tax commissioners. And thereafter said debt and obligation for the payment of money secured by said mortgage, together with the mortgage and the property upon which the lien thereof rests, shall be subject to all the provisions of this article with the same force and effect as if the said mortgage had been made, executed, delivered and recorded at a date subsequent to the enactment of this article, and shall thereafter be taxed under the provisions of this article and shall be entitled to the exemption contained in section two hundred and ninety-two. No mortgage which shall be taxable under the provisions of this act shall be assessed for taxes in this state, after the passage of this act, except in the manner and at the time provided in this article, but this article shall not affect any tax levied or any assessment wholly completed at or prior to its passage.

*The schedule to the mortgage tax article is not printed here.*

## \*ARTICLE XV.

### TAX ON TRANSFERS OF STOCK.

Section 315. Amount of tax.

- 316. Stamps how prepared and sold.
- 317. Penalty for failure to pay tax.
- 318. Cancelling stamps; penalty for failure.
- 319. Contracts for dies; expenses how paid.
- 320. Illegal use of stamps; penalty.
- 321. Power of state comptroller.
- 322. Civil penalty; how recovered.
- 323. Effect of failure to pay tax.
- 324. Application of taxes.

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\*Added by chap. 241, Laws of 1905.

§ 315. Amount of tax.—There is hereby imposed and there shall immediately accrue and be collected a tax as herein provided, on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any domestic or foreign association, company or corporation, made after the first day of June nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or the future transfer of any stock, on each hundred dollars of face value or fraction thereof, two cents. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral security for money loaned thereon which stock certificates are not actually sold, nor upon such stock certificates so deposited. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In case of sale where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers, and no further tax is hereby imposed upon the delivery of the certificate of stock, or upon the actual issue of a new certificate when the original certificate of stock is accompanied by the duly stamped memorandum of sale.

§ 316. Stamps how prepared and sold.—Adhesive stamps for the purpose of paying the state tax provided for by this article shall

be prepared by the state comptroller, in such form, and of such denominations and in such quantities as he may from time to time prescribe, and shall be sold by him to the person or persons desiring to purchase the same; he shall make provision for the sale of such stamps in such places and at such times as in his judgment he may deem necessary.

§ 317. **Penalty for failure to pay tax.**—Any person or persons who shall make any sale, without paying the tax by this article imposed or who shall in pursuance of any sale, deliver any stock, or evidence of the sale of any stock or bill or memorandum thereof, without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or by both such fine and imprisonment at the discretion of the court.

§ 318. **Cancelling stamps; penalty for failure.**—In every case where an adhesive stamp shall be used to denote the payment of the state tax provided by this article the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person fraudulently makes use of an adhesive stamp to denote the state tax imposed by this article, without so effectually cancelling and obliterating such stamp such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than two hundred nor more than five hundred dollars or be imprisoned for not less than six months, or both, at the discretion of the court.

§ 319. **Contracts for dies; expenses how paid.**—The state comptroller is hereby directed to make, enter into and execute for and in behalf of the state such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and

clerk hire together with such books and blanks as in his discretion may be necessary for putting into operation the provisions of this article; he shall be the custodian of all stamps, dies, plates or other material or thing furnished by him and used in the manufacture of such state tax stamps, and all expenses incurred by him and under his direction in carrying out the provisions of this article shall be paid to him by the state treasurer from any moneys appropriated for such purpose.

§ 320. **Illegal use of stamps; penalty.**—Any person who shall wilfully remove or cause to be removed, alter or cause to be altered the cancelling or defacing marks of any adhesive stamp provided for by this article with intent to use the same, or to cause the use of the same after it shall have been once used, or shall knowingly or wilfully sell or buy any washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same or prepare the same with intent for the further use thereof; or shall wilfully use any counterfeit stamp or any forged stamp with intent to defraud the state of New York, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months, or by both such fine and imprisonment, at the discretion of the court.

§ 321. **Power of state comptroller.**—The state comptroller may at any time after transfers of stock which by the provisions of this article are subject to a state stamp tax, inquire into and ascertain whether the tax imposed by the provisions of this article has been paid. For the purpose of ascertaining such fact the comptroller shall have the right and it shall be his duty to examine the books and papers of any person, firm, company, association or corporation. If from such examination the comptroller ascertains that the tax provided for in this article has not been paid he shall bring an action in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this article.

§ 322. Civil penalty; how recovered.—Any person who shall violate the provisions of this article shall in addition to the penalties herein provided forfeit to the people of the state a civil penalty of five hundred dollars for each violation. The state comptroller shall bring an action in his name as such comptroller in any court of competent jurisdiction for the recovery of any civil penalty and all moneys collected by him shall be paid into the state treasury.

§ 323. Effect of failure to pay tax.—No transfer of stock made after June first, nineteen hundred and five, on which a tax is imposed by this article, and which tax is not paid, at the time of such transfer shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court in this state.

§ 324. Application of taxes.—The taxes imposed under this article and the revenues thereof shall be paid by the state comptroller into the state treasury and be applicable to the general fund, and to the payment of all claims and demands which are a lawful charge thereon.

See §517, Penal Code, *post*



# Bonding of Towns and Railroad Aid Debts.

(See section 6, Stock Corporation Law, section 75, Railroad Law, *ante*.)

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ARTICLE VIII.—SECTION 10, CONSTITUTION OF THE STATE OF NEW YORK. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city, whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the

supply of water shall not exceed twenty years and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

#### CHAP. 685, LAWS OF 1892.

AN ACT in relation to municipal corporations, constituting chapter seventeen of the general laws.

#### THE GENERAL MUNICIPAL LAW.

\* \* \* \* \*

#### Funded and bonded debts.

§ 7. The bonded indebtedness of a municipal corporation, including interest due or unpaid, or any part thereof, may be paid up or retired by the issue of the new substituted bonds for

like amounts by the board of supervisors or supervisor, board, council or officers having in charge the payment of such bonds. Such new bonds shall only be issued when the existing bonds can be retired by the substitution of the new bonds therefor, or can be paid up by money realized by the sale of such new bonds. Where such bonded indebtedness shall become due within two years from the issue of such new bonds, such new bonds may be issued and sold to provide money in advance to pay up such existing bonds when they shall become due. Such new bonds shall contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and of the regularity of the issue; shall be made payable not less than one or more than thirty years from their date; shall bear date and draw interest from the date of the payment of existing bonds, or the receipt of the money to pay the same, at not exceeding the rate of five per centum per annum, payable quarterly, semi-annually or annually; and an amount equal to not less than two per centum of the whole amount of such new bonds may be payable each year after the issue thereof. Such new bonds shall be sold and negotiated at the best price obtainable, not less than their par value; shall be valid and binding on the municipal corporation issuing them; and until payable shall be exempt from taxation for town, county, municipal or state purposes. All bonds and coupons retired or paid shall be immediately cancelled. A certificate shall be issued by the officer, board or body issuing such new bonds, stating the amount of existing bonds, and of the new bonds so issued, which shall be forthwith filed in the office of the county clerk. Except as provided in this section, new bonds shall not be issued in pursuance thereof, for bonds of a municipal corporation adjudged invalid by the final judgment of a competent court. A majority of the taxpayers of a town, voting at a general town meeting, or special town meeting duly called, may authorize the issue in pursuance of this section of new bonds for such invalid bonds, and each new bond so issued shall contain substantially the following recital: "The

issue of this bond is duly authorized by a vote of the taxpayers of the said town," which shall be conclusive evidence of such fact. The payment, adjustment or compromise of a part of the bonded indebtedness of a municipal corporation shall not be deemed an admission of the validity or a recognition of any part of the bonded indebtedness of such municipal corporation not paid, adjusted or compromised.

Thus amended by chap. 333, Laws of 1901.

### **Municipal taxes of railroads payable to the county treasurer.**

§ 12. If a town, village or city has outstanding unpaid bonds, issued or substituted for bonds issued, to aid in the construction of a railroad therein, so much of all taxes as shall be necessary to take up such bonds, except school districts and highway taxes, collected on the assessed valuation of such railroad in such municipal corporation, shall be paid over to the treasurer of the county in which the municipal corporation is located. Such treasurer shall purchase with such moneys of any town, village or city, such bonds, when they can be purchased at or below par, and shall immediately cancel them in the presence of the county judge. If such bonds cannot be purchased at or below par, such treasurer shall invest such moneys in the bonds of the United States, of the state of New York, or of any town or village or city of such state, issued pursuant to law; and shall hold such bonds as a sinking fund for the redemption and payment of such outstanding railroad aid bonds. If a county treasurer shall unreasonably neglect to comply with this section, any taxpayer of the town, village or city having so issued its bonds may apply to the county judge of the county in which such municipal corporation is situated, for an order compelling such treasurer to execute the provisions of this section. Upon application of the town board of any town, the board of supervisors of the county in which said town is situated may authorize payment by the county treasurer of all moneys thus paid to him in any year by the railroads mentioned in this section, to the supervisor of such town, for its use and benefit; to

be applied either to the purchase of outstanding railroad aid bonds or the payment of interest thereon and any payment heretofore made in good faith by the treasurer of any county to any town or to the supervisor thereof, of the taxes received, in any year by such treasurer, from railroad corporations in that town is hereby validated. The county treasurer of any county in which one or more towns therein shall have issued bonds for railroad purposes, shall when directed by the board of supervisors or county judge of the county, execute and file in the office of the clerk of the county an undertaking with not less than two sureties, approved by such board or judge, to the effect that he will faithfully perform his duties pursuant to this section. The annual report of a county treasurer shall fully state, under the head of "railroad sinking fund" the name and character of all such investments made by him or his predecessors, and the condition of such fund.

Thus amended by chap. 515, Laws of 1903.

#### **Abolition of office of railroad commissioners.**

§ 13. The board of supervisors of any county may, upon the application of the auditing board of any municipal corporation therein, by resolution, abolish the office of railroad commissioners of such municipal corporation, and direct the manner of the transfer of their duties to the supervisor of the town, or the treasurer of the municipal corporation other than a town, and upon his compliance with such directions, such transferee shall be vested with all the powers conferred upon such railroad commissioners and subject to all the duties imposed upon them.

#### **Appointment of railroad commissioners.**

§ 14. The county judge of any county within which is a municipal corporation having or being entitled to have railroad commissioners, when this chapter shall take effect, and in which the duties imposed upon such commissioners are not fully performed, shall continue to appoint and commission, upon the application

of twenty freeholders within such corporation, three persons, who shall be freeholders and resident taxpayers therein, commissioners for the purpose of performing the duties and completing the business required of them pursuant to this chapter or any law. Such commissioners shall hold their office for five years, and until others are appointed by the county judge, unless their duties shall be sooner performed, or the office shall be abolished, who shall also, in like manner, fill any vacancies that may exist therein. Such commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and the necessary disbursements to be audited and paid by the usual auditing and disbursing officers of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum.

#### Oath and undertaking of commissioners.

§ 15. Before entering upon their duties such commissioners shall take the constitutional oath of office, and make and file with the county clerk of their county, their joint and several undertaking, with two or more sureties to be approved by the county judge of their county, to the effect that they will faithfully discharge their duties as such commissioners, and truly keep, pay over and account for all moneys belonging to such corporation coming into their hands.

#### Exchange or sale of railroad stock and bonds.

§ 16. The commissioners or officers of a municipal corporation, having the lawful charge and control of any railroad stock or bonds, for or in payment of which the bonds of such municipal corporation have been lawfully issued in aid of such railroad corporation, may exchange the stock or bonds of such railroad corporation for and in payment of such bonds, or the new substituted bonds of such municipal corporation, when such exchange can be made for not less than the par value of the stocks or bonds so held by them. If they can not make such exchange they may

sell such stocks or bonds at not less than par; but they may, on the application and with the approval, of the governing board of the municipal corporation, owning such stock and bonds, exchange, sell or dispose of such stock or bonds, at the best price and upon the best terms obtainable, for the municipal corporation they represent, and shall execute to the purchaser the necessary transfers therefor. All moneys received for any stock or bonds shall only be applied to the payment and extinguishment of the bonds of the municipal corporation, lawfully issued in aid of any such railroad, or substituted therefor; except that if the bonds so issued or substituted have all been paid, or the moneys so realized shall be more than sufficient to pay them in full, and all the costs and expenses of the sale, such proceeds or balance thereof shall be paid by the officers making the sale, to the supervisor of the town, or the treasurer of the municipal corporation, and applied to such lawful uses as the governing board of the municipal corporation, entitled to the same, may direct. The provisions of this section shall apply to all such commissioners or officers of a municipal corporation elected or appointed or acting under the provisions of any special act, and the authority hereby conferred shall not be limited by the provisions of any such special act.

Thus amended by chap. 490, Laws of 1893.

#### **Annual report of commissioners and payment of bonds.**

§ 17. The commissioners of a municipal corporation, having in charge the moneys received and collected, and who are responsible for the payment of the interest of the bonds lawfully issued by such municipal corporation, in aid of railroads, shall annually report to the governing board of the municipal corporation, the total amount of the municipal indebtedness of the municipal corporation they represent, upon such bonds or such new bonds substituted therefor, the date of the bonds and when payable, the rate of interest thereon, the acts under which they were issued, the amount of principal and interest that will become due thereon before the next annual tax levy and collection of taxes for the

next succeeding year, and the amount in their hands applicable to the payment of the principal or interest thereon. Each year such governing board shall levy and collect of the municipal corporation sufficient money to pay such principal and interest, as the same shall become due and payable. When collected, such moneys, with the unpaid sums on hand, shall be forthwith paid over to such commissioners, and applied by them to the purposes for which collected or held. When paid, such bonds shall be presented by such commissioners to the governing board of the municipal corporation, at least five days before the annual town meeting, village or city election, or meeting of the board of supervisors, next thereafter held, who shall cancel the same, and make and file a record thereof in the clerk's office of the municipal corporation, whose bonds were so paid or canceled.

Thus amended by chapter 466, Laws of 1893.

#### Accounts and loans by commissioners.

§ 18. Such commissioners shall present to the auditing board of the municipal corporation they represent, at each annual meeting of such board, a written statement or report, showing all their receipts and expenditures, with vouchers. They shall also loan on proper security or collaterals, or deposit in some solvent bank, or banking institutions, at the best rate of interest they can obtain, or invest in the bonds of the municipal corporation they represent, or in bonds of the state, or of any town, village, city or county therein, issued pursuant to law, or in the bonds of the United States, all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all earnings, profits or interest accruing from such loans, deposits or investments, shall be credited to the municipal corporation they represent, and accounted for in their annual settlement with the governing board thereof.

#### Reissue of lost or destroyed bonds.

§ 19. When any bonds lawfully issued by a municipal corporation in aid of any railroad, or in substitution for bonds so issued,



shall be lost or destroyed, such commissioners may issue new bonds in the place of the ones so lost or destroyed, at the same rate of interest, and to become payable at the same time, upon the owner furnishing satisfactory proof, by affidavit, of such ownership, and loss or destruction, and a written indemnity, with at least two sureties, approved as to form and sufficiency by the county judge of the county in which such municipal corporation is situated. Every new bond so issued shall state upon its face the number and denomination of the bond for which it is issued, that it is issued in the place of such bond claimed to have been lost or destroyed, that it is issued as a duplicate thereof, and that but one is to be paid. Such affidavit and indemnity, duly indorsed, shall be immediately filed in the county clerk's office.

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#### CHAP. 336, LAWS OF 1899.

AN ACT to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of the several counties containing towns, villages or cities bonded to aid in the construction of any railroad passing through such town, villages or cities, on account of the payment to the state of the state taxes collected from such railroads within such bonded towns, villages or cities.

SECTION 1. Any county of this State, containing one or more towns, villages or cities which have heretofore issued bonds to aid in the construction of any railroad passing through such towns, cities or villages, may present to the court of claims a claim for the amount of state taxes collected from or paid by any such railroad within the several towns, villages or cities of such county which were so bonded to aid in the construction of any such railroad, since the eighteenth day of May eighteen hundred and sixty-nine, and which said taxes were paid by the county treasurer of such county to the state treasurer. Jurisdiction is hereby conferred upon the court of claims to hear,

audit and determine such claims and to make awards and render judgments therefor against the state and in favor of such claimants, without interest thereon.

§ 2. The amount which shall be awarded to any county as provided in section one of this act, shall be paid to the county treasurer of such county; and such county treasurer shall invest and apply the same in the manner and for the purposes provided by section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled, 'An act to authorize the formation of railroad companies and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of such railroads," and the acts amendatory thereof; except that in case such county shall have heretofore paid to any such town, village or city, such state taxes or any portion thereof, or in case such county treasurer has heretofore set aside such state taxes or any portion thereof, for the benefit of such town, village or city, in the manner provided by said section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine and the acts amendatory thereof, then and in that case, such moneys or the portion thereof so paid or set aside as aforesaid, shall be used and applied by such county treasurer for the general purposes of the county.

§ 3. No award shall be made or judgment rendered herein against the state, unless the facts proved shall make out a case against the state, which would create a liability, were the same established in a court of law or equity against an individual or corporation or municipality; and in case such liability shall be satisfactorily established, then the court of claims shall award to and render judgment for the claimants for such sums as shall be just and equitable, notwithstanding the lapse of time since the accruing of said damages, provided any claim hereunder shall be filed with the court of claims within one year after the passage of this act.

See chap. 163, Laws of 1904; chap. 244, Laws of 1905, *post*.

## CHAP. 163, LAWS OF 1904.

AN ACT to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claims of the several counties containing towns, villages or cities bonded to aid in the construction of any railroad passing through such towns, villages or cities, on account of the payment to the state of the state taxes collected from such railroads within such bonded towns, villages or cities.

SECTION 1. Any county of this state, containing one or more towns, villages or cities which have heretofore issued bonds to aid in the construction of any railroad passing through such towns, cities or villages, may present to the court of claims a claim for the amount of state taxes collected from or paid by any such railroad within the several towns, villages or cities of such county which were so bonded to aid in the construction of any such railroad, since the eighteenth day of May, eighteen hundred and sixty-nine, and which said taxes were paid by the county treasurer of such county to the state treasurer. Jurisdiction is hereby conferred upon the court of claims to hear, audit and determine such claims and to make awards and render judgments therefor against the state and in favor of such claimants, without interest thereon.

§ 2. The amount which shall be awarded to any county as provided in section one of this act, shall be paid to the county treasurer of such county; and such county treasurer shall invest and apply the same in the manner and for the purpose provided by section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled "An act to amend an act entitled, 'An act to authorize the formation of railroad companies and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of such railroads," and the acts amendatory thereof; except that in case such county shall have heretofore paid to any such town, village or city, such state taxes or any portion

thereof, or in case such county treasurer has heretofore set aside such state taxes or any portion thereof, for the benefit of such town, village or city, in the manner provided by said section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine and the acts amendatory thereof, then and in that case, such moneys or the portion thereof so paid or set aside as aforesaid, shall be used and applied by such county treasurer for the general purposes of the county.

§ 3. No award shall be made or judgment rendered herein against the state, unless the facts proved shall make out a case against the state, which would create a liability, were the same established in a court of law or equity against an individual or corporation or municipality; and in case such liability shall be satisfactorily established, then the court of claims shall award to and render judgment for the claimants for such sums as shall be just and equitable, notwithstanding the lapse of time since the accruing of said damages, provided any claim hereunder shall be filed with the court of claims within six months after the passage of this act.

See chap. 336, Laws of 1899, *ante*; chap. 244, Laws of 1905, *post*.

#### CHAP. 244, LAWS OF 1905.

AN ACT to amend the county law, in relation to the power of the board of supervisors of any county to sell, assign, transfer or set over a judgment obtained in the court of claims by such county against the state of New York.

SECTION 1. Section twelve of chapter six hundred and eighty-six of the laws of eighteen hundred and ninety-two, entitled "An act in relation to counties, constituting chapter eighteen of the general laws," as amended by chapter one hundred and thirty of the laws of nineteen hundred, and chapter two hundred and ninety-six of the laws of nineteen hundred, and chapter two hundred and fifty-five of the laws of nineteen hundred and one, and chapter four hundred and sixty-five of the laws of nineteen hundred and three, is hereby amended by adding at the end of such

section, a new subdivision, to be known as subdivision nineteen, and to read as follows:

19. Whenever a judgment has been rendered in the court of claims in favor of any county against the state of New York, and the time to appeal therefrom has expired or the attorney-general has issued a certificate that there has been no appeal and that no appeal will be taken by the state from such judgment, the board of supervisors of such county may sell, assign, transfer or set over such judgment unto the comptroller, who may purchase the same as an investment for the various trust funds of the state or canal debt sinking fund, or unto any person, firm, association or corporation desiring to purchase such judgment, for a sum not less than the amount for which same was rendered with accrued interest but no judgment so acquired by the state shall be deemed merged or satisfied thereby. And such board of supervisors may designate and authorize its chairman and clerk, the treasurer of the county and the attorney of record procuring the entry of such judgment, or any or either of them to execute in the name of the county and deliver unto the party purchasing such judgment the necessary release, transfer or assignment required in law to complete such sale, setting over, transfer or assignment.

# The Code of Criminal Procedure.

## SOME SECTIONS APPLICABLE TO RAILROAD COMPANIES.

(As amended to and including the session of the Legislature of 1905.)

**Court of special sessions, jurisdiction of.**

§ 56. Subject to the power of removal provided for in this chapter, courts of special sessions, except in the city and county of New York and the city of Albany, have in the first instance exclusive judisdiction to hear and determine charges of misdemeanors committed within their respective counties, as follows:

\* \* \* \* \*

9. Intoxication of a person engaged in running any locomotive engine upon any railroad, or while acting as conductor of a car, or train of cars, on any such railroad, or a misdemeanor committed by any person on a railroad car or train.

\* \* \* \* \*

23. Unlawfully frequenting or attending a steamboat landing, railroad depot, church, banking institution, broker's office, place of public amusement, auction room, store, auction sale at private residence, passenger car, hotel, restaurant, or at any other gathering of people.

\* \* \* \* \*

35. For all violations of the provisions of the \* \* \* \* \* domestic commerce laws.

36. When a complaint is made to or a warrant is issued by a committing magistrate for a violation of the provisions of section six hundred and seventy-five of the penal code of the state of New York.

Subdivision 36 added by chap. 92, Laws of 1903, taking effect September 1, 1903.

See section 42, Railroad Law, section 41, Liquor Tax Law, *ante*; section 420, Penal Code, section 29, Rapid Transit Act, *post*.

**Of crime committed in the state on board of any railway train, etc.**

§ 137. When a crime is committed in this state, in or on board of any railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the lading or freightage of any such railway train or engine car, the jurisdiction is in any county through which, or any part of which, the railway train or car passes, or has passed in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed.

**Plea of guilty, how put in.**

§ 335. A plea of guilty can only be put in by the defendant himself in open court, except upon an indictment against a corporation, in which case it may be put in by counsel.

**Bail of certain railroad employees.**

§ 554a. Whenever a person employed as an engineer, fireman, motorman, conductor, trainman or otherwise, on a train or car of a steam, elevated or street surface railroad, is arrested in any city on a criminal charge, arising from an accident in connection with the operation of such train or car, resulting in an injury or death to a person or injury to property, such engineer, fireman, motorman, conductor, trainman or other employe, shall be immediately taken before a magistrate, if one is accessible, and otherwise, before a captain or sergeant of police, or acting sergeant of police, in charge of a police station in such city, and be given an opportunity to be admitted to bail. Such bail shall be taken in the same manner, so far as practicable, as is provided by section five hundred and fifty-four of this code, for the taking of bail in case of misdemeanors by a captain or sergeant of police, or acting sergeant of police in a city or village, except that the amount of bail shall be fixed by such officer at not exceeding one thousand dollars, and except that the undertaking shall provide for the appearance of the defendant before the magistrate, coroner, or

other officer, who, except for this section, would be authorized to take such bail. Such officer may however in his discretion, instead of exacting bail release such employe on his own recognizance, conditional for his appearance as above provided in case an undertaking is required.

Added by chap. 614, Laws of 1903, taking effect September 1, 1903.

§ 613. If chattels, books, papers or documents be required, a direction to the following effect must be contained in the subpoena: "And you are required also to bring with you the following," (describing intelligibly the chattels, books, papers or documents required).

Thus amended by chap. 547, Laws of 1897, taking effect September 1, 1897.

**Summons upon an information or presentment against a corporation, by whom issued, and when returnable.**

§ 675. Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

**Form of the summons.**

§ 676. The summons must be in substantially the following form:

"County of Albany, [or as the case may be.]

"In the name of the people of the State of New York:

"To the [naming the corporation.]

"You are hereby summoned to appear before me, at [naming the place], on [specifying the day and hour], to answer a charge made against you, upon the information of A. B., for [designating the offense, generally.]

"Dated at the city, [or 'town,'] of the day of , 18 .

"G. H., Justice of the Peace."

[Or as the case may be.]



§ 677. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

**Examination of the charge.**

§ 678. At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

**Certificate of the magistrate, and return thereof with the depositions.**

§ 679. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section 221.

**Grand jury may proceed as in the case of a natural person.**

680. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon as in the case of a natural person held to answer.

§ 681. When an indictment is filed against any corporation, such corporation must be arraigned thereon, and the court acquires jurisdiction over the corporation, in the manner following:

1. The clerk of the court wherein such indictment is found, or to which it is sent or removed, or the district attorney of the county, must issue a summons signed by him with his name of office, requiring such corporation to appear and answer the indictment by a demurrer or written plea to be verified in like

manner as a pleading in a civil action, at a time and place to be specified in such summons, such time to be not less than five days after the issue thereof. The summons may be substantially in the following form :

Supreme court, county of \_\_\_\_\_, (state the  
proper county or court as the case may be)

The People of the State of New York

vs.

The A. B. Company.

You are hereby summoned to appear in this court and, by demurrer or plea in writing duly verified, answer an indictment filed against you by the grand jury of this county, on the day of \_\_\_\_\_, charging you with the crime of (designating the offense generally). at a term of the supreme court (or as the case may be) of this county, at (naming the place) on (stating the day and hour) and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

C. D.,

District Attorney.

(or by order of the court, E. F., Clerk, as the case may be.)

2. The summons must be served at least four days before the appearance fixed therein, in the same manner as is provided for the service of a summons upon a corporation in a civil action; and if the corporation does not appear in the manner and at the time and place specified in the summons, judgment must be pronounced against it.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to answer an indictment, without the issuance or service of the summons as above provided. And when an indictment shall have been filed against a corporation it may voluntarily appear and answer the same by counsel duly authorized to so appear for it; in which

in the same manner as if the summons had been issued and served.

§ 682. When a fine is imposed upon a corporation upon conviction, it may be collected in the same manner as a judgment in a civil action, and if an execution issued upon such judgment be returned unsatisfied, the district attorney of the county may thereupon bring an action in the name of the people of the state of New York, to procure a judgment sequestering the property of the corporation, as provided by the Code of Civil Procedure.

#### Tramp defined.

§ 887a. A tramp is any person, not blind, over sixteen years of age, and who has not resided in the county in which he may be at any time for a period of six months prior thereto, who

1. Not having visible means to maintain himself, lives without employment; or

2. Wanders abroad and begs, or goes about from door to door, or places himself in the streets, highways, passages or public places to beg or receive alms; or

3. Wanders abroad and lodges in taverns, groceries, ale-houses, watch or station houses, outhouses, market places, sheds, stables, barns or uninhabited buildings, or in the open air, and does not give a good account of himself.

Section 887a added by chap. 664, Laws of 1898.

#### CHAP. 664, LAWS OF 1898.

§ 5. Sections two and six of chapter four hundred and ninety of the laws of eighteen hundred and eighty-five entitled "An act concerning tramps," are hereby repealed.

§ 6. This act shall not apply to cities of the first and second class.

See chap. 490, Laws of 1885, *ante*.

#### Examination as to residence.

§ 889. When complaint is made to any magistrate by any citizen or peace officer against a person under sections one, five

or six of section eight hundred and eighty-seven, the magistrate must, upon the examination of such person, cause testimony to be taken as to his residence, and if it appears that such person has not resided in the county for a period of six months prior to his arrest, such magistrate shall not commit such person as a vagrant, as provided by this article; but if he finds that such person is guilty of an offense charged in one of such subdivisions, and such person is not blind or under sixteen years of age, the magistrate shall adjudge him to be a tramp, and commit him to a penitentiary, as required by law. On such examination the uncorroborated testimony of the defendant as to his place of residence shall not be deemed sufficient proof thereof.

Added by chap. 664, Laws of 1898.

# The Penal Code.

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## SOME SECTIONS APPLICABLE TO RAILROAD COMPANIES.

(As amended to and including the session of the Legislature of 1901.)  
**Punishments, how determined.**

§ 13. Whenever in this code, the punishment for crime is undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this code. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, if a corporation is punishable by a fine of not more than five hundred dollars.

**Refusal to permit employees to attend election.**

§ 41f. A person or corporation who refuses to allow an employee entitled to a vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

**Duress and intimidation of voters.**

§ 41s. \* \* \* \* \*

3. Being an employer, pays his employees the salary or wage due, in "pay envelopes," upon which there is written or printed any political motto, device or argument containing the express or implied, intended or calculated to influence the political opinions or actions of such employees; or within ninety days of a general election, puts or otherwise exhibits in the establishment or place where his employees are engaged in labor,

hand-bill or placard containing any threat, notice or information that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employes reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employes, is guilty of a misdemeanor, and if a corporation, in addition, forfeits its charter.

See, also, section 109, Election Law.

**Making arrests, etc., without lawful authority.**

§ 119. No sheriff of a county, mayor of a city, or officials, or other person authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corporation, or otherwise, appoint as such special deputy, special constable, marshal, policemen, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policemen, or other peace officer, without having first received his appointment in writing from the authority lawfully appointing him. Any person or persons who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to any one as a deputy sheriff, marshal, or policeman, constable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without a regular process therefor, or any person who knowingly violates any

other provision of this section, is guilty of a misdemeanor. But nothing herein contained shall be deemed to effect, repeal or abridge the powers authorized to be exercised under sections one hundred and two, one hundred and four, one hundred and sixty-nine, one hundred and eighty-three, eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven of the Code of Criminal Procedure; or under chapter three hundred and forty-six of the laws of eighteen hundred and sixty-three, as amended by chapter two hundred and fifty-nine of the laws of eighteen hundred and sixty-six, and chapter one hundred and ninety-three, of the laws of eighteen hundred and seventy-five; or under chapter two hundred and twenty-three of the laws of eighteen hundred and eighty; or under chapter five hundred and twenty-seven of the laws of eighteen hundred and seventy-three; or under chapter two hundred and five of the laws of eighteen hundred and seventy-five; but all places kept for summer resorts and the grounds of racing associations in the counties of New York, Kings and Westchester, are hereby exempted from the provisions of this act.

Thus amended by chap. 272, Laws of 1892

**Compelling employees to agree not to join any labor organization a misdemeanor.**

§ 171a. Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employe or employes, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employe, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor. The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

**Murder in the first degree.**

§ 183a. A person who wilfully, by loosening, removing or displacing a rail, or by any other interference, wrecks, destroys or so injures any car, tender, locomotive or railway train, or part thereof, while moving upon any railway in this state, whether operated by steam, electricity or other motive power, as to thereby cause the death of a human being, is guilty of murder in the first degree, and punishable accordingly.

Added by chap. 548, Laws of 1897.

See section 635, Penal Code, section 30, Rapid Transit Act, *post*.

**Liability of persons in charge of steam engines.**

§ 199.. An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who willfully, or from ignorance or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

**Use of force or violence, declared not unlawful, etc.**

§ 223. To use or attempt, or offer to use, force or violence upon or toward the person of another, is not unlawful in the following cases:

\* \* \* \* \*

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from a carriage, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force or violence used is not more than sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

\* \* \* \* \*



§ 263. All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

§ 290.

\* \* \* \* \*

6. Or who, being the owner, keeper or proprietor of a junk shop, junk cart or other vehicle or boat or other vessel used for the collection of junk, or any collector of junk, receives or purchases any goods, chattels, wares or merchandise from any child under the age of sixteen years, is guilty of a misdemeanor.

Subdivision 6 added by chap. 309, Laws of 1903, taking effect September 1, 1903.

#### **Mismanagement of steam boilers.**

§ 362. An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

#### **Innkeepers and carriers refusing to receive guests and passengers.**

§ 381. A person who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guests, or to receive and carry any passengers, is guilty of a misdemeanor.

#### **Protecting civil and public rights.**

§ 383. A person who:

1. Excludes a citizen of this state, by reason of race, color or previous condition of servitude, from the equal enjoyment of

any accommodation, facility or privileges furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of the common schools and public instructions\* of learning, or by cemetery associations; or

2. Denies or aids or incites another to deny to any other person because of race, creed or color, full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement, is guilty of a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars.

Failure to furnish statistics to commissioner of labor statistics.

§ 384f. Any person who refuses, when requested by the commissioner of labor statistics,

1. To admit him or a person authorized by him to a mine, factory, workshop, warehouse, elevator, foundry, machine shop or other manufacturing establishment; or

2. To furnish him with information relative to his duties which may be in such person's possession or under his control; or,

3. To answer questions put by such commissioner in a circular or otherwise, or shall knowingly answer such questions untruthfully, is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Added by chap. 16, Laws of 1897.

Hours of labor to be required.

§ 384-h. Any person or corporation,

\* \* \* \* \*

2. Who shall require more than ten hours labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employes of a street surface and elevated

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\*So in the original.

travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

\* \* \* \* \*

4. Who shall require the employes of a corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this state to work contrary to the requirements of article one of the labor law, is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense. If any contractor with the state or a municipal corporation shall require more than eight hours for a days labor, upon conviction therefor in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.

Added by chap. 416, Laws of 1897.

See 175 N. Y., 84; also 136 N. Y., 554.

See section 4, chap. 711, Laws of 1892, and Labor Law, chap. 415, Laws of 1897, *ante*.

#### Payment of wages.

§ 384-i. A corporation or joint stock association or a person carrying on the business thereof, by lease or otherwise, who does not pay the wages of its employes in cash, weekly or monthly as provided in article one of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than twenty-five nor more than fifty dollars for each offense.

Added by chap. 416, Laws of 1897.

See Labor Law, chap. 415, Laws of 1897, *ante*.

#### Keeping gunpowder unlawfully.

§ 389. A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor. A person who manufactures gunpowder, dynamite, nitro-glycerine,

liquid or compressed air or gases, except acetylene gas or other gases used for illuminating purposes, naphtha, gasoline, benzine or any explosive articles or compounds, or manufactures ammunition, fireworks or other articles of which such substances are component parts in a cellar, room or apartment of a tenement or dwelling house or any building occupied in whole or in part by persons or families for living purposes, is guilty of a misdemeanor. And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substances, injures or occasions the injury of the person or property of another, is punishable by imprisonment for not more than two years. Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars and not less than three hundred dollars, or imprisonment in a state prison for not less than one nor more than five years, or be subject to both such fine and imprisonment. Nothing in this section contained shall be construed to prohibit or forbid the manufacture and sale of soda water, seltzer-water, ginger ale, carbonic or mineral water, or the charging with liquid carbonic acid gas of such waters or ordinary waters, or of beer, wines, ales or other malt and vinous beverages in such cellar, room or apartment of a tenement or dwelling house, or any building occupied in whole or in part by persons or families for living purposes.

Thus amended by chap. 486, Laws of 1902.

§ 416. An officer, agent, attorney or employe of a railroad corporation, who:

1. Offers a place, appointment, position or any other consideration to a railroad commissioner or to a secretary, clerk, agent, employe or expert employed by the board of railroad commissioners; or

2. After due notice, neglects or refuses to make or furnish any statement or report lawfully required by the board of railroad commissioners or willfully hinders, delays or obstructs such commissioners in the discharge of their official duties,

Is guilty of a misdemeanor.

See article 6, Railroad Law, *ante*.

### **Misconduct of railroad commissioners and of their employes.**

§ 417. Any railroad commissioner, or any secretary, clerk, agent, expert or other person employed by the board of railroad commissioners, who:

1. Directly or indirectly solicits or requests from or recommends to any railroad corporation, or to any officer, attorney or agent thereof, the appointment of any person to any place or position; or,

2. Accepts, receives or requests, either for himself or for any other person, any pass, gift or gratuity from any railroad corporation; or,

3. Secretly reveals to any railroad corporation, or to any officer, member or employe thereof, any information gained by him from any other railroad corporation; is guilty of a misdemeanor.

See article 6, Railroad Law, *ante*.

### **Person unable to read not to act or be employed as engineer.**

§ 418. Any person unable to read the time tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state; or any person who, in his own behalf, or in the behalf of any other person or

corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive, is guilty of a misdemeanor; or who employs a person as a telegraph operator who is under the age of eighteen years, or who has less than one year's experience in telegraphing, to receive or transmit a telegraphic message or train order for the movement of trains, is guilty of a misdemeanor.

**Misconduct of officials or employes on elevated railroads.**

§ 419. Any conductor, brakeman, or other agent or employe of an elevated railroad, who:

1. Starts any train or car of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention to depart therefrom by arising or moving toward the exit thereof, has departed therefrom; or before every passenger on the platform or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employe of such railroad that the train is full, and that no more passengers can then be received; or,

2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,

3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed; is guilty of a misdemeanor.

**Intoxication or other misconduct of railroad or steamboat employes.**

§ 420. 1. Any person who, being employed upon any railroad as engineer, conductor, baggagemaster, brakeman, switchtender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or, being employed as captain, engineer or other officer of a

vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or

2. An engineer, conductor, brakeman, switch-tender officer, agent or employe of any railroad corporation, fully violates or omits his duty as such officer, agent or employe, by which human life or safety is endangered, the prevention of which is not otherwise prescribed; is guilty of a misdemeanor.

See section 41, Liquor Tax Law, *ante*; also section 42, Railroad Act, *ante*; also section 56, Code of Criminal Procedure, *ante*; section 29 Railroad Act, *post*.

#### **Failure to ring bell, etc.**

§ 421. A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be sounded, at least eighty rods from any place where such railway crosses a traveled road or street on the same level (as in cities), or to continue the ringing such bell or sounding such whistle at intervals, until such locomotive and the train to which the locomotive is attached shall have completely crossed such road or street or any officer or employe of a corporation in charge of a locomotive, train or car, who shall willfully obstruct or cause to be obstructed, any farm or highway crossing with such locomotive, train or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.

Thus amended by chap. 759, Laws of 1900, taking effect September 1, 1900.

#### **Placing passenger car in front of merchandise or freight car**

§ 422. A person, being an officer or employe of a railway company, who knowingly places, directs or suffers a freight, merchandise or oil car to be placed in rear of a car used for the conveyance of passengers in a railway train, is guilty of a misdemeanor.

#### **Platforms and heating apparatus of passenger cars.**

§ 423. A railroad corporation, or any officer or director thereof having charge of its railroad, or any person managing

a railroad in this state, or any person or corporation running passenger cars upon a railroad into or through this state, who:

1. Fails to have the platforms or ends of the passenger cars run upon such railroad constructed in such manner as will prevent passengers falling between the cars while in motion; or

2. Except temporarily, in case of accident or emergency, heats any passenger car, while in motion, on any such railroad more than fifty miles in length, except a narrow-gauge railroad which runs only mixed trains, between October fifteenth and May first, by any stove or furnace inside of or suspended from such car, except stoves of a pattern and kind approved by the board of railroad commissioners for cooking purposes in dining-room cars, and except within the extended time allowed by the railroad commissioners in pursuance of law for introducing other heating apparatus; is guilty of a misdemeanor.

Thus amended by chap. 692, Laws of 1892.

See section 51, Railroad Law, *ante*.

#### Guard posts; automatic couplers.

§ 424. All corporations and persons other than employes, operating any steam railroad in this state,

1. Failing to cause guard posts to be placed in prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car; or

2. Failing after November first, eighteen hundred and ninety-two, to equip all of their own freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the board of railroad commissioners, in pursuance of law, for equipping such car with such couplers.



is guilty of a misdemeanor, punishable by a fine of not more than  
dollars for each offense.

Thus amended by chap. 664, Laws of 1896.

See, chap. 544, Laws of 1893, *ante*. Also section 49, Railroad Law, *ante*.

**Advising or inducing employees not to wear uniform a misdemeanor.**

§ 425. A person who,

1. Advises or induces any one, being an officer, agent or employe of a railway company, to leave the service of such company, because it requires a uniform to be worn by such officer, agent or employe, or to refuse to wear such uniform, or any part thereof; or,

2. Uses any inducement with a person employed by a railway company to go into the service or employment of any other railway company, because a uniform is required to be worn; or,

3. Wears the uniform designated by a railway company without authority;

Is guilty of a misdemeanor.

See section 43 Railroad Law, *ante*.

**Riding on freight trains; getting on car or train while in motion; obstructing, etc., horse or street railroad cars; punishment.**

§ 426. A person who,

1. Rides on any engine or any freight or wood car of any railway company, without authority or permission of the proper officers of the company or of the person in charge of the car or engine; or,

2. Who gets on any car or train while in motion (for the purpose of obtaining transportation thereon as passenger) or,

3. Who willfully obstructs, hinders or delays the passage of any car lawfully running upon any steam or horse or street railway;

Is guilty of a misdemeanor.

See chap. 590, Laws of 1872, *ante*.

**Unauthorized manufacture, sale or use of illuminating oils.**

§ 427a. A person who violates any provision of the domestic commerce law, relating to the standard, manufacture, sale, use or storage of any oil or burning fluid, wholly or partially composed of naphtha, coal oil, petroleum or products manufactured therefrom, or of other substance or materials which will flash at a temperature below one hundred degrees Fahrenheit, or relating to the burning or carriage of any such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit, is guilty of a misdemeanor.

See chap. 376, Laws of 1896, *ante*.

**Lights upon swing bridges.**

§ 433a. A corporation, company or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a misdemeanor.

See chap. 502, Laws of 1897, *ante*.

**Bribery of labor representatives.**

§ 447-f. A person who gives or offers to give any money or other things of value to any duly appointed representative of a labor organization with intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor; and no person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce

evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Added by chap. 659, Laws of 1904, taking effect September 1, 1904.

#### **Arson in first degree defined.**

§ 486. A person who willfully burns, or sets on fire, in the night time, either

\* \* \* \* \*

2. A car, vessel, or other vehicle, or a structure or building other than a dwelling-house, wherein, to the knowledge of the offender, there is at the time a human being;

Is guilty of arson in the first degree.

#### **Arson in second degree.**

§ 487. A person who,

\* \* \* \* \*

4. Willfully burns, or sets on fire, in the night-time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time;

Is guilty of arson in the second degree.

#### **Arson in third degree.**

§ 488. A person who willfully burns, or sets on fire, either,

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice the insurer thereof; or,

2. A vessel, car, or other vehicle, or a building, structure, or other erection under circumstances not amounting to arson in the first or second degree;

Is guilty of arson in the third degree.

#### **Arson, how punished.**

§ 489. Arson is punishable as follows:

1. In the first degree, by imprisonment for a term not exceeding forty years.

2. In the second degree, by imprisonment for a term not exceeding twenty-five years.

3. In the third degree, by imprisonment for a term not exceeding fifteen years.

Thus amended by chap. 549, Laws 1897, taking effect September 1, 1897.  
(Chap. 549, Laws 1897.)

§ 2. The penalties above prescribed shall, however, only apply to offenses committed after the taking effect of this act. Nothing herein contained shall in any manner affect or impair any liability or punishment incurred prior to the time this act takes effect, under or by virtue of the then existing provisions of the section hereby amended, and all offenses of arson committed before that time shall be punishable according to such previously existing provisions, as fully, and in the same manner, as though this act had not been passed.

### **Burglary in third degree.**

§ 498. A person who either,

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or,

2. Being in any building, commits a crime therein and breaks out of the same;

Is guilty of burglary in the third degree.

### **“Building,” defined.**

§ 504. The term “building” as used in this chapter includes a railway car, vessel, booth, tent, shop, enclosed ginseng garden, or other erection or inclosure.

Thus amended by chap. 332, Laws of 1903, taking effect September 1, 1903.

### **Unlawfully entering building.**

§ 505. A person who, under circumstances or in a manner not amounting to burglary, enters a building, or any part thereof, with intent to commit a felony or a larceny, or any malicious mischief, is guilty of a misdemeanor.

### **Other cases of forgery in third degree.**

§ 514. A person who either,

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or

appertaining to the business of the corporation, association, or partnership or individuals; \* \* \*

Is guilty of forgery in the third degree.

#### **Forging passage tickets.**

§ 516. A person who, with intent to defraud, forges, counterfeits or falsely alters any ticket, cheque or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

#### **Forging United States or state stamps.**

§ 517. A person who forges, counterfeits or alters any postage or revenue stamp of the United States, or any tax or revenue stamp of the state of New York, or who sells, or offers, or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

Thus amended by chap. 242, Laws of 1905.

See chap. 241, Laws of 1905, *ante*.

#### **Officer of corporation selling, etc., forged or fraudulent scrip, etc.**

§ 518. An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such com-

pany or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding \$3,000.

**Falsely indicating person as corporate officer.**

§ 519. The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery, in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

**Terms "forge" and "forging."**

§ 520. The expression "forge," "forged" and "forging," as used in this chapter, includes false making, counterfeiting and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature of a party or witness, and the placing or connecting together with intent to defraud different parts of several genuine instruments.

**Completed unissued instruments property (larceny).**

§ 536. All the provisions of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the maker thereof to any person as a purchaser or owner.

**Value of passenger ticket.**

§ 546. If the thing stolen is a ticket, paper or other writing, entitling or purporting to entitle the holder or proprietor thereof

to a passage upon a railway car, vessel, or other public conveyance, the price at which a ticket, entitling a person to a like passage, is usually sold, is deemed the value thereof.

#### **Criminally receiving property.**

§ 550. A person, who buys or receives any stolen property, or any property which has been wrongfully appropriated in such a manner as to constitute larceny according to this chapter, knowing the same to have been stolen or so dealt with, or who corruptly, for any money, property, reward, or promise or agreement for the same, conceals, withholds, or aids in concealing or withholding any property, knowing the same to have been stolen, or appropriated wrongfully in such a manner as to constitute larceny under the provisions of this chapter, if such misappropriation has been committed within the state, whether such property were so stolen or misappropriated within or without the state, or who being a dealer in or collector of junk, metals or second hand materials, or the agent, employe or representative of such dealer or collector, buys or receives any wire, cable, copper, lead, solder, iron or brass used by or belonging to a railroad, telephone, telegraph, gas or electric light company without ascertaining by diligent inquiry, that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving such property, and is punishable, by imprisonment in a state prison for not more than five years, or in a county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

Thus amended by chap. 328, Laws of 1903, taking effect July 1, 1903.

#### **Frauds in the organization of corporations.**

§ 590. A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to

believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced; is guilty of a misdemeanor.

#### Fraudulent issue of stock, etc.

§ 591. An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either,

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledges or issues, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or,

2. Re-issues, sells, pledges or disposes of, or causes to be re-issued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares, is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.



**Fraud in procuring organization of corporation or increase of stock.**

§ 592. An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

**Misconduct of directors of stock corporations.**

§ 594. A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended,

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or,

3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock; or,

6. (Repealed by chapter 588, Laws of 1901.)

7. (Repealed by chapter 588, Laws of 1901.)

**Is guilty of a misdemeanor.**

**Misappropriation of property, by officer of a corporation, etc.**

§ 602. A director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and with intent to defraud, omits to make, or cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association; and a director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in a state prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Thus amended by chap. 662, Laws of 1892. See chapter 692, Laws of 1892 also amending this section.

**Misconduct of officers and directors of stock corporations.**

§ 610. An officer or director of a stock corporation who:

1. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

2. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share; is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

Thus amended by chap. 692, Laws of 1892.

**Misconduct of officers and employes of corporations.**

§ 611. A director, officer, agent or employe of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,
2. Concurs in omitting to make any material entry thereof; or,
3. Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or,
4. Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same or to take extracts therefrom.

Subdivision 4 thus amended by chap. 692, Laws of 1893.

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer; is guilty of a misdemeanor.

Thus amended by chap. 692, Laws of 1892.

**Misconduct of corporate elections.**

§ 613. Any person who:

1. (Repealed by chapter 588, Laws of 1901.)
2. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or,

Subdivision 2, thus amended by chap. 588, Laws of 1901.

3. Acts as an inspector of election at any such meeting and violates an oath taken by him, in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector; is guilty of a misdemeanor.

Thus amended by chap. 692, Laws of 1892.

**Presumption of knowledge of corporate condition and business and of assent thereto by directors; definition.**

§ 614. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state. The term "director" as used in this chapter includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described. A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record of minutes.

Thus amended by chap. 692, Laws of 1892.

**Sale of passage tickets on vessels and railroads forbidden except by agents specially authorized.**

§ 615. No person shall issue or sell, or offer to sell, any passage ticket, or an instrument giving or purporting to give any

right, either absolutely or upon any condition or contingency to a passage or conveyance upon any vessel or railway train, or a berth or state-room in any vessel, unless he is an authorized agent of the owners or consignees of such vessel, or of the company running such train, except as allowed by sections six hundred and sixteen and six hundred and twenty-two; and no person is deemed an authorized agent of such owners, consignees or company, within the meaning of the chapter, unless he has received authority in writing therefor, specifying the name of the company, line, vessel or railway for which he is authorized to act as agent, and the city, town or village together with the street and street number, in which his office is kept, for the sale of tickets.

Added by chap. 506, Laws of 1897, taking effect September 1, 1897. Unconstitutional in part, 157 N. Y. See section 38, Railroad Law, *ante*.

#### Sales by authorized agents restricted.

§ 616. No person, except as allowed in section six hundred and twenty-two, shall ask, take or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railway train, or for the procurement of any ticket or instrument giving or purporting to give a right, either absolutely or upon a condition or contingency, to a passage or conveyance upon a vessel or railway train, or a berth or state-room on a vessel, unless he is an authorized agent within the provisions of the last section; nor shall any person, as such agent, sell or offer to sell, any such ticket, instrument, berth or state-room, or ask, take or receive any consideration for any such passage, conveyance, berth or state-room, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the last section, nor for a sum exceeding the price charged at the time of such sale by the company, owners or consignees of the vessel or railway mentioned in the ticket. Nothing in this section or chapter contained shall prevent the properly authorized agent of any transportation company from purchasing from the properly authorized agent of any other transportation company a ticket for a pas-

senger to whom he may sell a ticket to travel over any part of the line for which he is the properly authorized agent, so as to enable such passenger to travel to the place or junction from which his ticket shall read. Every person who shall have purchased a passage ticket from an authorized agent of a railroad company, which shall not have been used, or shall have been used only in part, may, within thirty days after the date of the sale of said ticket, present the same, unused or partly used, for redemption, at the general office of the railroad company which issued said ticket, or at the ticket office where said ticket was sold, or at the ticket office at the point to which the ticket has been used. If said ticket, wholly unused, shall be presented for redemption at the ticket office where sold, the same shall be then and there redeemed by the agent in charge of said ticket office at the price paid for said ticket. If said ticket, partly used, shall be presented for redemption at the ticket office where sold, or at the ticket office at the point to which used, the ticket agent at either of said offices, upon the delivery of said ticket, shall issue to the holder thereof a receipt, properly describing said ticket and setting forth the date of the receipt of said ticket, and the name of the person from whom received, and shall thereupon forthwith transmit said ticket for redemption to the general office. It shall be the duty of every railroad company to redeem tickets presented for redemption, as in this section provided for, promptly and within not to exceed thirty days from the date of presentation at the general office or from the date of the aforesaid receipt. A wholly unused ticket shall be redeemed at the price paid therefor. A partly used ticket shall be redeemed at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket of the same class between the points for which said ticket was actually used. Mileage books shall be redeemed within thirty days after the date of the expiration thereof in the same manner. Every railroad company which shall wrongfully refuse redemption, as in this section provided for, shall forfeit to the aggrieved party fifty dollars, which sum may be recovered, together with the amount

of redemption money to which the party is entitled, in an action in any court of competent jurisdiction, together with costs; but no such action can be maintained unless commenced within one year after the cause of action accrued.

Thus amended by chap. 506, Laws of 1897, taking effect September 1, 1897. Unconstitutional in part, 157 N. Y. See section 38, Railroad Law, *ante*.

**Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets.**

§ 617. No person other than an agent appointed, as provided in section 615, shall sell, or offer to sell, or in any way attempt to dispose of any order, certificate, receipt or other instrument, for the purpose or under the pretence, of procuring any ticket or instrument mentioned in section 615, upon any company or line, vessel or railway train therein mentioned. And every such order sold or offered for sale by any such agent, must be directed to the company, owners or consignees at their office.

**Penalty.**

§ 618. A person guilty of a violation of any of the provisions of the preceding sections of this chapter is punishable by imprisonment in a state prison not exceeding two years, or imprisonment in a county jail not exceeding six months.

Thus amended by chap. 662, Laws of 1892.

**Conspiring to sell passage tickets in violation of law.**

§ 619. All persons who conspire together to sell, or attempt to sell to any person, any passage ticket, or other instrument mentioned in sections 615 and 616, in violation of those sections, and all persons, who, by means of any such conspiracy, obtain, or attempt to obtain any money, or other property, under the pretence of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in a state prison not exceeding five years.

§ 619a. No transfer ticket or written or printed instrument giving, or purporting to give, the right of transfer to any person or persons from a public conveyance operated upon one line or

route of a street surface railroad to a public conveyance upon another line or route of a street surface railroad, or from one car to another car upon the same line of street surface railroad, shall be issued, sold or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument, or shall sell or give away such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage after the time limited for its use shall have expired, shall be guilty of a misdemeanor.

Added by chap. 663, Laws of 1898.

Conspirators may be indicted, notwithstanding object of conspiracy has not been accomplished.

§ 620. Persons guilty of violating the last section may be indicted and convicted for a conspiracy, though the object of such conspiracy has not been executed.

Offices kept for unlawful sale of passage tickets, declared disorderly houses.

§ 621. All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this chapter are punishable by imprisonment in a county jail for a period not exceeding six months.

Thus amended by chap. 662. Laws of 1892.

Owners, pursers, etc., allowed to sell tickets.

§ 622. The provisions of this chapter do not prevent the actual owners or consignees of any vessel from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel



from selling in his office on board of such vessel, any passage tickets upon such vessel.

Station masters, conductors, etc., allowed to sell tickets.

§ 623. The provisions of this chapter do not prevent the station master or other ticket agent upon any railway from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

Emigrants sales and exchanges of passenger tickets.

§ 626. A person who,

1. Sells, or causes to be sold, a passage ticket, or order for such ticket, on any railway, vehicle or vessel, to any emigrant passenger at a higher rate than one and a quarter cents per mile; or,

2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether emigrant or first-class; or,

3. Directly or indirectly, by means of false representations, purchases or receives from an emigrant passenger any such ticket; or,

4. Procures or solicits any such passenger having such a ticket to exchange the same for another passenger ticket, or to sell the same and purchase some other passenger ticket; or,

5. Solicits or books any passenger arriving at the port of New York from a foreign country before such passenger has left the vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having emigrant passengers on board, for the purpose of soliciting or booking such passengers; and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship;

Is guilty of a misdemeanor.

**"Company" defined.**

§ 627. The term "company," as used in this chapter, includes all corporations, whether created under the laws of this state or of the United States, or those of any other state or nation.

**Issuing fictitious bills of lading, receipts and vouchers.**

§ 629. A person who:

1. Being the master, owner, or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher; or,

2. Carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness; is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Thus amended by chap. 692, Laws of 1892.

**Erroneous bills of lading on receipts issued in good faith excepted.**

§ 630. No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading receipt or other voucher did not correspond with the description given in such instrument of the merchandise received.

if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

**Duplicate receipt must be marked "duplicate."**

§ 631. A person mentioned in sections 628 and 629, who issues any second or duplicate receipt or voucher of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$1,000, or by both.

**Selling, hypothecating or pledging property received for transportation or storage.**

§ 632. A person mentioned in sections 628 and 629, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$1,000, or by both.

**Property demanded by process of law.**

§ 634. The last two sections (§§ 632 and 633) do not apply to any case where property is demanded by virtue of legal process.

**Injuries to railroad tracks, et cetera.**

§ 635. A person who wilfully:

1. Displaces, loosens, removes, injures or destroys any rail, sleeper, switch, bridge, viaduct, culvert, embankment or structure or any part thereof, attached, appertaining to or connected with any railway, or by any other means attempts to wreck, destroy, or so damage any car, tender, locomotive or railway train or part thereof, while moving or standing upon any railway

track in this state, as to render such car, tender, locomotive or railway train wholly or partially unfitted for its ordinary use, whether operated by steam, electricity or other motive power; or

2. Places any obstruction upon the track of any such railway; or

3. Wilfully destroys or breaks any guard erected or maintained by a railroad corporation as a warning signal for the protection of its employees; or

4. Wilfully discharges a loaded firearm or projects, or throws a stone or other missile at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or

5. Wilfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, dynamo, motor, locomotive, or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or wilfully interferes with or interrupts any motive power used in running such road, or wilfully places any obstruction upon the track of such railroad, or wilfully discharges a loaded firearm, or projects or throws a stone or any other missile at such railway train or locomotive, car or vehicle, standing or moving upon such railway; or

6. Removes a journal brass from a car while standing upon any railroad track in this state, without authority from some person who has a right to give such authority, is punishable as follows: First. If thereby the safety of any person is endangered, by imprisonment for not more than twenty years. Second. In every other case by imprisonment for not more than five years.

Thus amended by chap. 183, Laws of 1897, taking effect September 1, 1897. See section 183a, Penal Code, *ante*; section 30, Rapid Transit Act, *post*.

**Altering, etc., signal or light for railway engine or train.**

§ 638. A person who, with intent to bring a vessel, railway engine or railway train into danger, either,

1. Unlawfully or wrongfully shows, masks, extinguishes, alters or removes a light or other signal; or

2. Exhibits any false light or signal;

Is punishable by imprisonment for not more than ten years.

**Endangering life by maliciously placing explosive near building, car, etc.**

§ 645. A person who places in, upon, under, against or near to, any building, car, vessel or structure, gunpowder or any other explosive substance, with intent to destroy, throw down or injure the whole or any part thereof, under such circumstances, that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

§ 654. A person who unlawfully and willfully destroys or injures any real or personal property of another or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this state, or without like authority or permission, puts upon or runs any hand car, or other car, on any railroad track in this state, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this state, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows:

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than twenty-five dollars, by imprisonment for not more than four years.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

3. And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof.

Thus amended by chap. 186, Laws of 1892.

**Carrying animals in a cruel manner, a misdemeanor.**

§ 659. A person who carries or causes to be carried in or upon any vessel or vehicle, or otherwise, any animal in a cruel

or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

Throwing substance injurious to animals in public places, a misdemeanor.

§ 661. A person who willfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal, is guilty of a misdemeanor.

Transporting animals for more than twenty-four consecutive hours, a misdemeanor.

§ 663. A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours, without unloading for rest, water and feeding, during ten consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed. If the owner, agent, consignee, or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals while so unloaded or rested, the railway company, or other carriers thereof, may charge the expense thereof to the owner or consignee and shall have a lien thereon for such expense.

Running horses on highway a misdemeanor.

§ 666. A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes, or permits them to run, is guilty of a misdemeanor.

Thus amended by chap. 539, Laws of 1904.

**Definitions.**

§ 669. 1. The word "animal," as used in this title, does not include the human race, but includes every other living creature;

2. The words "torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted; \* \* \* \* \*

**Endangering life by refusal to labor.**

§ 673. A person who willfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.

**Offenses not otherwise enumerated.**

§ 675. Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person or persons in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor. A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor; but nothing in this code contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.

See subdivision 36, section 56, Code of Criminal Procedure, *ante*.

## \* Rapid Transit Act.

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(As amended to and including the session of the Legislature of 1905.)

**CHAP. 4, LAWS OF 1891, AMENDED BY CHAP. 102, LAWS OF 1892, CHAP. 556, LAWS OF 1892, CHAP. 752, LAWS OF 1894, CHAP. 519, LAWS OF 1895, CHAP. 729, LAWS OF 1896, CHAP. 616, LAWS OF 1900, CHAP. 587, LAWS OF 1901, CHAPTERS 533, 542, 544 AND 584, LAWS OF 1902, CHAPTERS 562 AND 564, LAWS OF 1904, AND CHAPTERS 599 AND 631, LAWS OF 1905.**

(See provisions of Greater New York Charter, *ante*.)

**AN ACT to provide for rapid transit railways in cities of over one million inhabitants.**

**Commissioners of rapid transit; appointments; board constituted; vacancies.**

**SECTION 1.** In each city having over one million of inhabitants, according to the last preceding national or state census, there shall be a board of rapid transit railroad commissioners in and for such city, which shall consist of the mayor of such city, the comptroller or other chief financial officer of such city, the president of the chamber of commerce of the state of New York, by virtue of his office, and the following named persons, to wit: William Steinway, Seth Low, John Clafin, Alexander E. Orr and John H. Starin. The members of said board shall be styled commissioners of rapid transit. Vacancies which may take place in the offices so held by the persons specifically named herein as such commissioners shall be filled by a majority vote of the remaining members of said board. The board thus constituted shall have and exercise the specific authority and powers hereinafter con

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\*See article 5, Railroad Law, *ante*.



ferred and also such other and necessary powers as may be requisite to the efficient performance of the duties imposed upon said board by this act.

Thus amended by chap. 752, Laws of 1894.

#### Oath of commissioners.

§ 2. Each of the said commissioners other than the mayor and comptroller or other chief financial officer of such city shall take and subscribe an oath faithfully to perform the duties of his office, which oath shall be filed in the office of the clerk of any county within which there shall be a city of the class mentioned in the first section of this act.

Thus amended by chap. 752, Laws of 1894.

#### First meeting of board; by-laws and rules; quorum; record of proceedings.

§ 3. Within twenty days after the filing of the oaths of said commissioners so required to make and file the same the commissioners of rapid transit in respect to each of such cities shall meet and organize as a board. The board when so organized, may frame and adopt by-laws not inconsistent with this act, and establish suitable rules and regulations for the proper exercise of the powers and duties hereby conferred and imposed, and may, from time to time, amend the same. Four members of the board shall constitute a quorum for the transaction of business, but a less number may adjourn meetings. The said board shall adopt a seal, and keep a record of its proceedings, which shall be a public record and be open to inspection at all reasonable times.

§ 4. The said board upon its own motion may proceed, from time to time, to consider and determine whether it is for the interest of the public and of the city in which it is appointed, that a rapid transit railway or railways for the conveyance and transportation of persons and property should be established therein, and upon the request in writing of the local authorities of any such city at any time, the said board shall proceed forthwith to consider and determine the same questions, and in each

case the said board shall conduct such an inquest and investigation as may be deemed necessary in the premises. If, after any such consideration and inquest, the said board shall determine that a rapid transit railway or railways, in addition to any already existing authorized or proposed are necessary for the interest of the public, and such city, it shall proceed to determine and establish the route or routes thereof and the general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon and the property abutting thereon affected, and the concurrent votes of at least six members of the board shall be necessary for the purpose of determining and establishing such route or routes and plan of construction. The said board, from time to time, may locate the route or routes of such railway or railways over, under, upon, through and across any streets, avenues, bridges, viaducts, rivers, waters and lands within such city, including blocks between streets or avenues or, partly over, under, upon, through and across any streets, avenues, bridges, viaducts, and lands within such city and partly through blocks between streets or avenues; provided that the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having control of that portion of a street, bridge, viaduct, or highway, upon which it is proposed to construct or operate such railway or railways be first obtained, or in case the consent of such property owners cannot be obtained, that the determination of three commissioners appointed by the general term of the supreme court in the district of the proposed construction, given after due hearing of all parties interested, and confirmed by the court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property owners; except that no public park nor any lands or places, lawfully set apart for, or occupied by, any public building of any city or county, or of the state of New York, or of the United States, nor those portions of Grand, Classon, Franklin avenues and Downing

street in the city of Brooklyn, lying between the southerly line of Lexington avenue and northerly line of Atlantic avenue, nor that portion of Classon avenue in said city lying between the northerly line of Lexington avenue and southerly line of Park avenue, nor that portion of Washington avenue in said city lying between Park and Atlantic avenues, nor DeBevoise place, Irving place and Leffert's place, Lee avenue, Nostrand avenue, Waverly avenue, Vanderbilt avenue and Clinton avenue in said city of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main streets, nor any part of Fifth avenue in the city of New York, nor that portion of any street or avenue which is now actually occupied by any elevated railroad structure, shall be occupied by any corporation to be organized under the provisions of this act for the purpose of constructing a railway in or upon any of such public parks, lands or places, or upon or along either of the said excepted streets or avenues. It shall be lawful for said commissioners to locate the route of a railway or railways, by tunnel under any such public parks, lands, places, rivers or waters and to locate the route of any railway to be built, under this act, across any of the streets and avenues now occupied by an elevated railroad structure in the city of New York, or across any of the streets or avenues excepted in this act at any point at which, in its discretion, the board of rapid transit railroad commissioners may deem necessary in the location of any route or routes, or under, or under and along, any of said streets or avenues now so occupied or so excepted in this act. Nothing in this act shall authorize the construction of an elevated railway on Broadway south of Thirty-third street, nor on Madison avenue in the city of New York. It shall not be lawful to grant, use or occupy, for the purposes of an elevated railroad, except for the purpose of crossing the same, any portion of the following named streets and places in the city of New York, that is to say: Second avenue below Twenty-third street; Fourteenth street, between the easterly line or side of Seventh avenue, and the westerly side of Fourth avenue; nor Eleventh street, west of Seventh avenue, nor any part of Bank street; Nassau street;

Printing House square, socalled, south of Franklin street; Park row, south of Tryon row; Broad street and Wall street.

2. The provisions of the said section four of the said act shall, with reference to any rapid transit railroad for which routes and a general plan have been heretofore adopted by the board of rapid transit railroad commissioners of any city and for the municipal construction of which a contract has been heretofore made by any city, be deemed to have been in full force as hereby amended from before the time when the routes and general plan for such railroad or railroads were so adopted by the board of rapid transit railroad commissioners.

Thus amended by chap. 564, Laws of 1904. See section 2, chap. 616, Laws of 1900.

§ 5. After any determination by said board of any such route or routes and of any general plan of construction of said railway or railways, the said board shall transmit to the board of estimate and apportionment or other board or boards of said city having the control of any street, highway, boulevard, drive-way, bridge, tunnel, park, parkway, dock, bulkhead, wharf, pier or public grounds or water which is within or belongs to the city, a copy of said plans and conclusions as adopted. It shall be the duty of such board of estimate and apportionment and of every other such board or boards having such control, upon receiving such copy of plans and conclusions to appoint a day not less than one week nor more than ten days after the receipt thereof for the consideration of such plans and conclusions, and the said board of estimate and apportionment and every other such board having such control shall, on the day so fixed, proceed with the consideration thereof and may continue and adjourn such consideration, from time to time, until a final vote shall be taken thereon, as hereinafter provided. Within sixty days after the copy of such plans and conclusions adopted by the board of rapid transit railroad commissioners shall have first been received by said board of estimate and apportionment or such other board or boards having such control, a final vote shall be taken thereon, by ayes and nays, according to the number of votes by law pertaining to each member of any such

board in the form of a vote upon a resolution to approve such plans and conclusions, and to consent to the construction of a railway or railways in accordance therewith. Upon the adoption of such a resolution by a majority vote of all the members of the said board of estimate and apportionment or other such board or boards having such control according to the number of votes by law pertaining to each member of any such board and the approval of the mayor, the said plans and conclusions shall be deemed to have been finally consented to and adopted, and such consent shall be deemed to be consent of the local authorities of such city; provided, that where in any such city the exclusive control of any street, road, bridge, viaduct, highway or avenue which is to be used or occupied by any railway or railways constructed under the provisions of this act, is by law vested in any local authority other than the board of estimate and apportionment of such city, the approval of the aforesaid plans and conclusions and the consent to the construction of a railway thereunder shall be given by such local authority in place of and if required in addition to such approval and consent by said board of estimate and apportionment and with like effect. Upon obtaining the approval and consent of the local authorities as above provided, the said board of rapid transit railroad commissioners shall also, unless such approval and consent of local authorities shall have been refused, take the necessary steps to obtain, if possible, the said consents of the property owners along the line of the said route or routes. For the purposes of this act the value of the property bounded on that portion of any street or highway in, upon, over or under which it is proposed to construct or operate such railway or railways, or any part thereof, shall be ascertained and determined from the assessment roll of the city in which the said property is situated, confirmed or completed last before the local authorities shall have given their consent as above provided. If such consents of property owners cannot be obtained, the said board may, in its own name, make application to the appellate division of the supreme court in the judicial district in which

such railway is to be constructed for the appointment of three commissioners to determine and report after due hearing whether such railway ought to be constructed and operated. Two weeks' notice of such application shall be given by daily publication thereof, Sundays and holidays excepted, in six daily newspapers published in the city where such proposed railway is to be constructed, if there be so many newspapers published in said city, and if not, then in all the daily newspapers published in said city. The newspapers in which said publication shall be made shall be designated by the appellate division of the supreme court to which such application is to be made on the application of the commissioners without notice. The said appellate division, upon due proof of the publication aforesaid, shall appoint three disinterested persons who shall act as commissioners, and such commissioners within ten days after their appointment shall cause public notice to be given in the manner directed by the said appellate division of their first sitting, and may adjourn from time to time until all their business is completed. Vacancies in such commission may be filled by said appellate division after such notice to persons interested as the appellate division may deem proper, and the evidence taken before as well as after such vacancy occurred shall be deemed to be properly before such commissioners. The said commissioners shall determine after public hearing of all parties interested whether such railroad ought to be constructed and operated and shall report the evidence taken to said appellate division together with a report of their determination whether such road ought to be constructed and operated, which report, if in favor of the construction and operation of such road shall, when confirmed by said court, be taken in lieu of the consent of the property owners above mentioned. Such report shall be made within sixty days after the appointment of said commissioners, unless the said court, or a judge thereof, shall extend such time. The board of estimate and apportionment of the city of New York shall, with respect to that city, be hereafter for all purposes of this act and be deemed to be the local author-

ity in control of the streets, roads, bridges, viaducts, highways, avenues, boulevards, driveways, parks, parkways, docks, bulkheads, wharfs, piers and public grounds and waters which are within or belong to the said city; and the consent of such board of estimate and apportionment and the mayor, without the consent of the common council, board of aldermen or other board or officer of the city, shall be the only consent of local authorities required hereunder.

Thus amended by chap. 631, Laws of 1905, section 2, of said chapter 631, being as follows:

§ 2. (Chapter 631, Laws of 1905.) This act and all the amendments hereby made to the sections thereof hereby amended, shall be applicable to every grant, franchise or contract heretofore made, authorized or issued by the said board of rapid transit railroad commissioners but not yet consented to by the common council or board of aldermen of the city, as well as to all grants, franchises and contracts hereafter made, authorized or issued by the said board of rapid transit railroad commissioners.

**Detailed plan; subways for pipes and wires; work at points of sub-surface structures; expenses, how paid.**

§ 6. When the consents of the local authorities and the property owners, or, in lieu thereof, the authorization of the said general term of the supreme court upon the report of commissioners, shall have been obtained, the board of rapid transit railroad commissioners shall at once proceed to prepare detailed plans and specifications for the construction of such rapid transit railway or railways in accordance with the general plan of construction, including all devices and appurtenances deemed by it necessary to secure the greatest efficiency, public convenience and safety, including the number, location and description of stations and plans and specifications for the suitable supports, turnouts, switches, sidings, connections, landing places, buildings, platforms, stairways, elevators, telegraph and signal devices, and other suitable appliances incidental and requisite to what the said board may approve as the best and most efficient system of rapid transit in view of the public needs and requirements, and the said board may, in its discretion, include in said plans provisions for subways or tunnels for sewers, gas or water pipes, electric wires and other conductors proper to be placed underground, whenever necessary so to do, in order to permit of the proper construction of any railway herein provided for in accordance with the plans

and specifications of the said board. Stations and station approaches may be under or over streets of the route or cross streets, and the board of aldermen, or other legislative body, of any such city shall have power to regulate by general or special ordinance or resolution, the erection, alteration and maintenance upon or in connection with any building used wholly or in part for station purposes, or approaches, of any and all structures or parts of structures extending over the whole or any part of any sidewalk or sidewalks adjacent thereto. The board may, from time to time, alter such detailed plans and specifications, but always so that the same shall accord with the general plan of construction; but whenever a contract shall have been made for the construction of any railway herein provided for, no such alteration shall be made by the board without the consent of the contractor and his sureties, except as liberty shall have been reserved in such contract by said board for such alteration. Whenever the construction of any railway, depressed way, subway or tunnel under the provisions of this act shall interfere with or disturb or endanger any sewer, water pipe, gas pipe, or other duly authorized subsurface structure, the work of construction at such points shall be conducted in the city of New York in accordance with the reasonable requirements of the commissioner of public works, and in other cities in accordance with the reasonable requirements and under the supervision of the officer or local authority having the care of and the jurisdiction or control over such subsurface structures so interfered with, disturbed or endangered. All expenses incidental to such supervision and to the work of reconstructing, readjusting and supporting any such sewer, water pipe, gas pipe or other duly authorized subsurface structure shall be borne and paid by the company which shall have acquired the right, privilege and franchise to construct, maintain and operate such railway, pursuant to a sale of the same at public auction, as hereinafter provided, if any such sale shall be made by said board. Where under the direction of the said board or in pursuance of any general plan adopted or of any contract made by the said board, galleries, ways or subways shall be constructed to contain



sewers, pipes or other subsurface structures, the said galleries, ways or subways shall be maintained by the said city and shall be in the care and charge of the said board and subject to such regulations as it shall prescribe not inconsistent with the provisions of this act, and any revenue derived therefrom shall be paid into the treasury of said city, except that where bonds shall have been issued to provide for the cost of construction of such railroads, such amounts shall be paid to the sinking fund of the city, if there be one, or if not then into the sinking fund, to be established and created out of the annual rentals of the said road, as provided in section thirty-seven of this act. Provided, however, that any person or corporation who or which at the time of the construction of the said galleries, ways or subways, shall own pipes, subways or conduits in a street, avenue or public place in which said galleries, ways or subways shall be constructed pursuant to this act, shall be entitled to the use of such galleries, ways or subways for his or its said pipes, subways or conduits in the same manner as the said person or corporation shall be entitled by law to the use of such street, avenue or public place, and that no rent shall be charged for such use, except a reasonable charge to defray the actual cost of maintenance, unless such pipes, subways or conduits shall be of greater capacity than those theretofore owned by such person or corporation in said street, avenue or public place, and that, if the capacity of any such pipe, subway or conduit, so placed in the said galleries, ways, or subways shall be increased, the rent shall be charged only for such increased capacity; and provided further, that the placing in any such galleries, ways, or subways of the subways or conduits of any corporation owning subways or conduits for electrical conductors, shall not in any wise affect the right of such corporation to charge and demand such compensation or rent for the use of said subways or conduits by other corporations or individuals as is, or may be, permitted by law.

Thus amended by chap. 542, Laws of 1902.

Public sale of franchise; notice thereof; terms and conditions; supervision of board and engineers; deposits by bidders; nullity of bids and rights thereunder; time for beginning and finishing roads; forfeiture and resale of franchise; terms as to organization of corporation, etc.; rejection and acceptance of bids; terms on resales; adjournments; term of franchise; proviso as to extension.

§ 7. If, after having secured the necessary consents and after having prepared such detailed plans and specifications as are by this act provided for, it shall not have been determined by vote of the people as provided by sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four, that such railway or railways shall be constructed for and at the expense of such city as hereafter provided, said board shall sell at public auction in the city where said railway or railways are to be built and for the account and benefit of said city the right, privilege and franchise to construct, maintain and operate such railway or railways. Notice of the time and place of such sale shall be published three times a week for at least six successive weeks in at least three daily newspapers published in said city. The board may prescribe all such terms and conditions of sale as it may deem to be for the interest of the public and of the city in which the railway or railways are to be constructed. The advertisement of sale shall contain only so much of the said terms, plans and specifications for the construction as the said board may think proper, but such advertisement must state at what place the full terms, plans and specifications may be examined, and they shall be subject to examination under such reasonable rules and regulations as the board may prescribe. The terms of sale shall provide for the construction of the railway or railways under the supervision of the board, and for the approval of an engineer or engineers to be appointed, from time to time, by the board, and the corporation or corporations to be organized for the purpose of constructing and operating such railway or railways as in this act provided shall pay such engineer or engineers such salary as may,

from time to time, be fixed by the said board of rapid transit railroad commissioners. Such engineer or engineers shall hold their office at the pleasure of the said board. The terms of sale shall require the successful bidder to deposit with the comptroller or chief fiscal officer of the city, in cash or approved securities, such amount as the board may deem sufficient to constitute a guarantee of full compliance with the terms of sale by the purchaser and by the corporation to be formed for the purpose of building and operating said railway as hereinafter provided. Said bids and all rights which may have been acquired thereunder shall become null and void and of no effect, at the option of said board, should there be a failure to organize a corporation to exercise such rights, privileges and franchises as required by said terms of sale and this act, or for any violation of any of the requirements of said terms of sale which should be complied with before such corporation is organized, and thereupon any deposit which may have been made pursuant to such terms of sale shall be paid into the treasury of such city upon a certificate being made and filed by said board with the public officer with whom such deposit shall have been made, that said bid, and all rights which may have been acquired thereunder, have become null and void and of no effect; and said rights, privileges and franchises shall be again sold by said board, subject to all the provisions of this act regulating such sales. The terms of sale shall require the construction of the road to be begun within a time to be specified in said terms of sale, and to be finished within a certain time thereafter, to be specified therein, and may prescribe the time with which portions of the same shall be begun and finished. The said terms of sale may reserve to the board the power to extend the times for the commencement and completion of the construction of said railway, or of portions of the same, if, in its discretion, the said board deem such extension to be for the best interests of the city. In case the corporation formed for the purpose of constructing said railway shall fail to begin or finish the construction within the times for those purposes respectively limited, all rights, privileges and franchises of

such corporations to maintain and operate said railway shall be forfeited, and upon such forfeiture being adjudged by the court in a suit brought for that purpose in the name of the mayor, aldermen and commonalty of the city of New York, or such other appropriate corporate title of said city or by said board of rapid transit railroad commissioners, then the said board shall have power to advertise and resell said rights, privileges and franchises and so much of the road as shall have been constructed by such corporation; such suit shall have preference over all other cases in all courts; and the proceeds of such resale shall be applied first to the payment of the expenses of the resale, and then to the discharge of any liens which may have been created upon such property, and the balance shall be paid over to the said corporation. The terms of sale must provide for the organization by the purchaser or purchasers of such rights, privileges and franchises of a corporation to exercise the same, and to construct, maintain and operate such rapid transit railway or railways, with the powers and subject to the duties and liabilities granted or imposed by this act. The said terms of sale must also specify the amount of the capital of any such corporation, and number of shares of capital stock which such corporation shall be authorized to issue, the percentage to be paid in cash by the subscribers on subscribing for such shares, the maximum amount of the bonded indebtedness which such corporation be authorized to incur, and which may be secured by mortgage upon its property and franchises, and the rates of fares and freights which such corporation may charge and collect for the carriage of persons and property. But the rate of fare for any passenger on said railway from any point on the same northward or southward within the city of New York shall not exceed five cents under any provision of this act. The said board may, if it considers that the public interest requires it to do so, reject all bids and readvertise the said rights, privileges and franchises for sale, with the same or different terms of sale, as often as it may deem necessary in the interest of such city, and shall finally accept that bid which, under all circumstances, in its opinion

is most advantageous to the public and such city; and no bid shall be accepted without the concurrent vote of six members of the board. The terms of sale on any such resale must contain all the provisions required by this act to be inserted in the original terms of sale. Such sale may be adjourned from time to time at the discretion of the board. All sales of such rights, privileges and franchises shall be made for a definite term of years, but the expiration of the term, if sold for a term of years, shall not impair any mortgage or other lien upon the property of such corporation or the rights of any creditor or creditors of such corporation; provided, however, that nothing herein contained shall be so construed as to extend the term for which such rights, privileges and franchises are sold.

Thus amended by chap. 752, Laws of 1894, and chap. 519, Laws of 1895:

**Resale of franchise after expiration of term; purchasers; new corporation.**

§ 8. Within one year, and not less than six months, prior to the expiration of any term for which such rights, privileges and franchises shall have been sold, said board shall proceed to resell the right to maintain and operate the said railway. Such sale shall be made in the manner prescribed for the original sale, and the board is empowered to make suitable provisions for securing to the corporation then operating such railway or railways suitable compensation for the railroad structure and appurtenances, and for any other property, real or personal, which the said corporation may own or of which it may be vested at the expiration of the term for which such rights, privileges and franchises were sold. Any corporation theretofore organized under the provisions of this act may be a purchaser on such resale; but if no such corporation be the purchaser, a new corporation shall be formed to maintain and operate said road in the manner prescribed for the organization of a corporation on the original sale, except that the plans and specifications according to which said railway has been constructed need not be set out at large, but may be referred to as forming part of the articles of association of said new corporation.

Offices and assistants for board, etc.

§ 9. The said board may rent such offices and employ such engineers, attorneys and other persons, from time to time, as it may, in its discretion, deem necessary to the proper performance by it of its duties as in this act prescribed. It may sue in the name and behalf of the city for which it acts as a board. It may in the name of and in behalf of the said city bring action of specific performance or may apply by mandamus to compel the performance within its city by any corporation or person of any duty or obligation with reference to or arising out of the construction or operation of any railroad under, or by reason of, any grant made or right acquired under this act or the acts amendatory hereof or supplementary hereto, or out of or by reason of any contract made or authorized by any board of rapid transit commissioners within its city, or it may in behalf of and in the name of said city bring actions to recover damages for any violation of contract or duty, or for any wrong committed by any such corporation or person by reason of any non-performance or violation of duty under the provisions of this act, or under any contract or stipulation made in pursuance of any provisions of this act. Every action or proceeding brought by the said board, and every action or proceeding in which an injunction is had or sought against the board or the said city, or against any corporation or person who or which shall have entered into a contract under the provisions of this act, or any act supplementary hereto, or amendatory hereof, by reason of any act or thing done, proposed or threatened under or by virtue of any provision of this act, or any act supplementary hereto, or amendatory hereof, or is sought against any corporation or person claiming or claiming to act under any grant or franchise under this act, or any act supplementary hereto, or amendatory hereof, and every action or proceeding in which the constitutionality of any part of this act, or of any act supplementary hereto, or amendatory hereof, shall or may be brought in question, shall have a preference above all causes not criminal on

the calendar of every court, and may be brought on for trial or argument upon notice of eight days for any day of any term on which the court shall be in session.

Thus amended by chap. 519, Laws of 1895.

Appropriations for board; proceedings upon failure to appropriate amount; liability of city; audit and payment of expenditures; revenue bonds, issue of, etc.; repayment of expenses; compensation of commissioners.

§ 10. The board of estimate and apportionment or other board or public body on which is imposed the duty, and in which is vested the power, of making appropriations of public moneys for the purposes of the city government in any city in which it is proposed to construct such railway or railways shall, from time to time, on requisition duly made by the board of rapid transit railroad commissioners, appropriate such sum or sums of money as may be requisite and necessary to properly enable it to do and perform, or cause to be done and performed, the duties herein prescribed, and to provide for the compensation of such commissioners, and such appropriation shall be made forthwith upon presentation of a requisition from the board of rapid transit railroad commissioners, which shall state the purposes for which such moneys are required by the said board. In case the said board of estimate and apportionment or such other board or public body fail to appropriate such amount as the board of rapid transit railroad commissioners deem requisite and necessary, the said board of rapid transit railroad commissioners may apply to the general term of the supreme court, in the department in which the railway is to be or has been constructed, on notice to the board of estimate and apportionment, or such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes required by this section, and the decision of said general term shall be final and conclusive; and no city shall be liable for any indebtedness incurred by the said board of rapid transit railroad commissioners in excess of such appropriation or appropriations. It

shall be the duty of the auditor and comptroller of any such city, after such appropriations shall have been duly made, to audit and pay the proper expenditures and compensation of said commissioners upon vouchers therefor, to be furnished by the said commissioners, which payments shall be made in like manner as payments are now made by the auditor, comptroller, or other public officers, of claims against and demands upon such city: and for the purpose of providing funds with which to pay the said sums, the comptroller or other chief financial officer of said city is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes, and out of the proceeds of such bonds to make the payments in this section required to be made. The amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made. All expenses of the said board of rapid transit railroad commissioners, including the compensation of said commissioners, so incurred and paid by any city as in this section provided, and for which any city shall be liable, shall be repaid, with interest, by the bidder or bidders at the public sale of the rights, privileges and franchises, as in this act provided, in case said board shall so sell the same, whose bid shall be accepted by the board of rapid transit railroad commissioners, and the terms of such sale shall specify the time when such payment shall be made, as well as the amount thereof. The commissioners, other than the mayor and comptroller or other chief financial officer of such city, shall be paid a reasonable compensation for the duties performed by them, from time to time, under the provisions of this act. The amount of such compensation shall be determined by the general term of the supreme court in the department in which said city shall be located upon application by said board after notice to the mayor of such city.

Thus amended by chap. 752, Laws of 1894.



Corporations, how organized; articles of association; approval and filing thereof; subscriptions to stock; meeting of subscribers; preference in subscriptions, etc.

§ 11. A corporation or corporations to construct and operate such rapid transit railway or railways, and to enjoy and exercise the rights, privileges and franchises in this act provided for shall be created and organized in the manner following: Articles of association shall be duly signed and acknowledged by not less than twenty-five persons, and such articles shall set forth the name of the proposed corporation and duration thereof. Said articles must also state that they are made and filed under and in pursuance of this act for the purpose of taking and exercising the rights, privileges and franchises so purchased as aforesaid, according to the terms of sale; and such terms of sale and all plans and specifications must be made a part of said articles, annexed thereto and filed therewith. The said articles must also contain such other provisions as the said board may deem requisite and necessary, not inconsistent with the terms of sale or with this act. The said articles must be approved by said board, by the concurrent vote of four members, and its approval must be indorsed thereon and attested by the seal of the board and the signature of its presiding officer, and must then be filed in the office of the secretary of state, and a duly certified copy, or a duplicate thereof, must be filed in the office of the clerk of the county in which such railway or railways are to be constructed. Immediately after the articles of association shall have been so made, approved and filed, the board of rapid transit railroad commissioners shall cause books of subscription to the capital stock of any such corporation to be opened, and shall give public notice of the opening of such books and of the time and place at which subscriptions will be received; and when the full amount of such capital stock shall have been subscribed by not less than fifty persons, and such percentage of the amount subscribed as may have been fixed by the board in the terms of sale shall have been paid in, in cash, to such bank or trust company as the board

may select, the said board shall call a meeting of the subscribers for the purpose of organizing the corporation, serving upon or mailing to each subscriber a notice of such meeting at least ten days before the time appointed for holding the same; and the person or persons whose bid shall have been accepted by the said board of rapid transit railroad commissioners shall, if they elect to become subscribers to the capital stock of such corporation, be entitled to a preference for themselves and their associates in subscribing for, and in the allotment of the shares of capital stock of such corporation.

Election of first directors; by-laws to be adopted.

§ 12. At such meeting of subscribers thirteen directors of the corporation shall be elected, each of whom shall be a holder in his own right of at least one hundred shares of the capital stock of the corporation, and the board of rapid transit railroad commissioners shall appoint the the\* inspectors of the first election. Each share of stock shall entitle the holder to one vote for each director. The directors so selected shall hold office for one year and until others are elected in their places. At such meeting by-laws must be adopted not inconsistent with this act, which by-laws shall, among other things, provide for:

1. The term of office of the directors elected at any subsequent meeting of stockholders, which term shall not exceed one year.

2. The manner of filling any vacancy which may occur in any office or in the board of directors.

3. The time and place of the annual meeting of stockholders.

4. The manner of calling and holding special meetings of stockholders.

5. The number of stockholders who shall attend either in person or by proxy, at any stockholders' meeting in order to constitute a quorum.

6. The officers of the corporation, the manner of their election by the directors, and their duties and powers, and among which

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\* So in the original.

officers there shall be included a president, a secretary and a treasurer.

7. The manner of electing or appointing inspectors of election.

8. The manner of amending the by-laws.

The by-laws may also provide for the forfeiture of shares for the non-payment of calls and for such other matters as may be deemed proper by the board of rapid transit railroad commissioners and they must be approved by a resolution of said board.

Record of proceedings; certificate of organization; record and certificate to be filed; payment of deposit to corporation; repayment to purchaser of franchise.

§ 13. Within ten days after the said subscribers' meeting a record of the proceedings thereof, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen, shall be prepared and duly certified by the person presiding over, and person acting as secretary of said meeting. There shall be attached thereto a certificate of the board of rapid transit railroad commissioners, attested by its seal and the signature of its presiding officer, that said board has approved the by-laws adopted at the subscribers' meeting, and that said corporation has been organized in accordance with the provisions of this act. The said record and certificate shall be filed by said board in the office of the secretary of state, and a duly certified copy or duplicate thereof shall be filed in the office of the clerk of the county in which said railway or railways are to be built, and thereupon and upon the payment to the state treasurer of a tax of one-eighth of one per centum of the par value of the capital stock of said corporation, such corporation shall be deemed to be fully organized. A copy of said certificate, duly certified by the secretary of state, or by the county clerk in whose office it is filed, shall be presumptive evidence of the due organization of such corporation in all courts and proceedings. Upon the production of the certified copy of said certificate, and upon the order of such corporation, the bank or trust company in which the percentage of subscriptions to the

capital stock shall have been deposited, shall pay over to any such corporation the amount of such deposit, and said corporation shall repay to the purchaser or purchasers at the sale provided for in section seven of this act, the expenses paid by him or them to the city pursuant to the provisions of the terms of sale, with interest to the date of such repayment.

**Modification of plans, etc.; certificates thereof; filing of certificate and modified plans.**

§ 14. The said board of rapid transit railroad commissioners, if, in their judgment, the public interest requires, may, at any time after the full organization of any such corporation, by the concurrent vote of four members, authorize such corporation to alter or add to the detailed plans and specifications contained in its articles of association, provided the plans and specifications as so modified do not change the route or routes of said railway and be not inconsistent with the general plan of construction, adopted under the provisions of section four of this act, and provided also such modifications be first approved by a vote of two-thirds of the directors of said corporation present and voting at any special meeting duly called for the purpose, by written notice stating the nature of the business to be transacted at said meeting. When such authorization by the board of rapid transit railroad commissioners shall have been given, a certificate shall be prepared, and acknowledged by the president and a majority of the directors of said corporation, stating the nature of the modification, and that the same has been approved by the board of directors in the manner above set forth, to which certificate there shall be attached a copy of so much of the original plans and specifications as are to be affected by the modification, and also the plans and specifications as modified. There shall also be contained in such certificate a declaration of the approval of said board of rapid transit railroad commissioners, attested in the same manner as the certificate of full organization. The said certificate, plans and specifications shall

then be filed in the office of the secretary of state, and a certified copy or duplicate thereof shall be filed in the office of the clerk in which the articles of association are filed. And thereupon said corporation shall be authorized to construct its railway or railways and appurtenances in accordance with such modified plans and specifications.

#### **Principal office and place of taxation.**

§ 15. Every corporation organized under this act shall have its principal office and be taxed on its property in the city where its railway or railways are situated. But no taxes of any kind or nature shall be levied or imposed upon that portion of any railway constructed under this act which is in process of construction, and not in actual operation for the transportation of passengers or freight, but this exemption from taxation during construction shall not apply to any portion or portions of said railway after the date on which said portion or portions shall have been opened to the public for the transportation of passengers or freight.

Thus amended by chap. 556, Laws of 1892.

#### **Board of directors; vacancies and qualifications; exhibition of books.**

§ 16. The affairs of said corporation shall be managed by a board of thirteen directors, who shall be chosen annually, by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected in their places. In the election of directors, each stockholder shall be entitled to one vote for each share of stock held by him. Vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation: No person shall be a director unless he shall be a stockholder owning one hundred shares of stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen. At every election of directors the

books and papers of such corporation shall be exhibited to the meeting, provided a majority of the stockholders present shall require it.

**Payment of subscriptions to stock.**

§ 17. The directors shall require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed in money at such times and in such installments as they may deem proper, not inconsistent with the by-laws and the articles of association.

**Personal liability of stockholders; notice and commencement of action; recovery by stockholder.**

§ 18. Each stockholder of any corporation formed under this act shall be individually liable to the creditors of such corporation, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such corporation, until the whole amount of the capital stock so held by him shall have been paid to the corporation; and all the stockholders of any such corporation shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services, for thirty days' service performed for such corporation, but shall not be liable to an action therefor before an execution or executions shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution or executions shall be the amount recoverable, with costs, against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days' service, he shall give him notice in writing within twenty days after the performance of such service, that he intends so to hold him liable, and he shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders

in said corporation, in ratable proportion to the amount of the stock they shall respectively hold.

#### **Transfer of stock.**

§ 19. The stock of every corporation formed under this act shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until all previous calls thereon shall have been fully paid in.

#### **Increase or reduction of capital; notice to stockholders; statement to be made and filed.**

§ 20. Any corporation formed under this act may increase or reduce its capital stock from time to time upon obtaining the approval of the board of rapid transit railroad commissioners by a concurrent vote of four members thereof. Such increase or reduction must be approved by a vote in person, or by proxy, of two-thirds in amount of all the stockholders of the corporation, at a meeting of such stockholders called by the directors of the corporation for that purpose, by a notice in writing to each stockholder, to be served on him in the manner provided for service of the notice of the subscribers' meetings provided for in section eleven of this act. Such notice shall state the time and place of the meeting, and its object, and the amount to which it is proposed to increase or reduce the capital stock. A statement of the increase or reduction shall be signed by the president and a majority of the directors and shall be filed in the office of the secretary of state and of the clerk of the county in which the original articles of association are filed. There must be attached thereto a certificate of the approval of said board of rapid transit railroad commissioners attested in the same manner as the certificate of full organization.

#### **Liability of certain holders of stock.**

§ 21. No person holding stock in any such corporation, as executor, administrator, guardian or trustee, and no person hold-

ing such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner, and to the same extent, as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name.

**Liability of corporation to employes of contractors; notice to be given; actions, when commenced.**

§ 22. As often as any contractor for the construction of any part of a railway, which is in progress of construction under the provisions of this act, shall be indebted to any laborer for thirty or any less number of days' labor performed in constructing said road, such laborer may give notice of such indebtedness to said corporation in the manner herein provided; and said corporation shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said corporation therefor. Such notice shall be given by said laborer to said corporation within twenty days after the performance of the number of days' labor for which the claim is made. Such notice shall be in writing, and shall state the amount and number of days' labor, and the time when the same was performed and the name of the contractor from whom due, and shall be signed by such laborer or his attorney, and shall be served on an engineer, agent or superintendent employed by such corporation having charge of the section of the road on which such labor was performed personally, or by leaving the same at the office or usual place of business of such engineer, agent or superintendent with some person of suitable age. But no action shall be maintained against any corporation under the provisions of this section, unless the same be commenced within



thirty days after notice is given to such company by such laborer as above provided.

**Real estate; proceedings to acquire title.**

§ 23. Every such corporation shall have the right to acquire and hold such real estate or easement or other interest therein, or rights appertaining thereto, as may be necessary to enable it to construct, maintain and operate the said railway, or railways, and such as may be necessary for stations, depots, engine-house, car-houses, machine-shops and other appurtenances specified in the articles of association; and in case any such corporation can not agree with the owner or owners of such property it shall have the right to acquire title to the same in pursuance of the terms of and in the manner prescribed in title one of chapter twenty-three of the Code of Civil Procedure, known as the condemnation law.

**Corporate powers; voluntary grants; purchase of property; may cross and unite with other roads; compensation; transportation of persons and property; entry upon streets, etc.; construction and maintenance of road; excavations; parks and streets, use or occupancy of; right to borrow money and issue bonds.**

§ 24. Every corporation formed under this act shall have power:

1. To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railway or railways, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

2. To purchase, lease, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railway or railways, and the stations or other accommodations necessary to accomplish the objects of its incorporation; but nothing herein contained shall be held as

repealing or in any way affecting the act, entitled "An act authorizing the construction of railroads upon Indian lands," passed May twelve, eighteen hundred and thirty-six.

3. To cross, intersect, joint and unite its railway or railways with any other railway at any point on its route and upon the grounds of such other railway company, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the objects of its connections. And every corporation whose railway is or shall be hereafter intersected by any new railway, shall unite with the owners of such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, the same shall be ascertained and determined by commissioners to be appointed by the court, in the manner provided in this act in respect to acquiring title to real estate. And if the two corporations cannot agree upon the points and manner of such crossings and connections, the board of rapid transit railroad commissioners shall determine the same on the application of either corporation.

4. To take and convey persons and property on its railway or railways by the power or force of steam, or by any motor other than animal power, and to receive compensation therefor not inconsistent with the provisions of this act, and the terms of sale under which the said corporation shall have acquired its rights, privileges and franchises.

5. To enter upon and underneath the several streets, avenues, public places and lands designated by the said board of rapid transit railroad commissioners, and enter into and upon the soil of the same; to construct, maintain, operate and use, in accordance with the plan adopted by said board, a railway or railways upon the route or routes and to the points decided upon, and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon the plan adopted by the said board, and which may be necessary for operating the same, except that nothing in

this act shall authorize the construction of a railway crossing the track of any steam railway in actual operation at the grade thereof, and it shall be lawful to make such excavations and openings along the route through which such railway or railways shall be constructed as shall be necessary from time to time; in all cases the surface of said streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and under the direction of the proper local authorities; and in all cases the use of the streets, avenues, places and lands designated by the said board, and the right of way through the same, for the purpose of a railway or railways, as herein authorized and provided, shall be considered, and is hereby declared, to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held; but no such corporation shall have the right to acquire the use or occupancy of public parks or squares in such county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction.

6. From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railroad, and to issue and dispose of their bonds for such purposes; but the amount of such bonds outstanding at any one time shall not exceed the amount limited by the articles of association.

Thus amended by chap. 556, Laws of 1892.

#### **Employees to wear badges.**

§ 25. Every conductor, baggage master, engineer, brakeman or other servant of any railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letter of the style of the corporation by which he is employed. No conductor or collector, without such badge, shall be entitled to demand or receive from any passenger any fare or ticket, or

to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

#### Carrying of mails; extra trains therefor.

§ 26. Any corporation or person operating a railroad under any provision of this act or of any act supplementary hereto or amendatory hereof shall, when applied to by the postmaster-general, convey the mails of the United States on their road or roads respectively; and in case the parties cannot agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and conditions of carrying the same, it shall be lawful for the governor of this State to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as aforesaid.

Thus amended by chap. 519, Laws of 1895.

#### Ejection of passengers from cars.

§ 27. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, on stopping the train.

**Running of cars and conveyance of freight and passengers.**

§ 28. Every such corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice; and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads, and at usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor; and shall be liable to the party aggrieved in an action for damages, for any neglect or refusal in the premises.

**Intoxication of employees.**

§ 29. If any person shall, while in charge of a locomotive engine running upon the railway of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

See section 42, Railroad Law; section 41, chap. 112, Laws of 1896; section 420, Penal Code; section 56, Code of Criminal Procedure, *ante*.

**Willful injury to property.**

§ 30. If any person or persons shall willfully do, or cause to be done, any act or acts whatever, whereby any building, construction or work of or on any part of any railroad either constructed or operated under any provision of this act or of any act supplementary hereto or amendatory hereof, or under any provision of any contract made under this act or any act supplementary hereto or amendatory hereof, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the

owner of such building, construction, works, engine, machine, structure, matter or thing treble the amount of damages sustained in consequence of such offense.

Thus amended by chap. 519, Laws of 1895.

See sections 183a, 635, Penal Code, *ante*.

#### Dissolution by legislature.

§ 31. The legislature may, at any time, annul or dissolve any corporation formed under this act; but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

See chap. 310, Laws of 1886, *ante*.

#### Power to fix connecting routes and extend lines; additional tracks and facilities; plans of construction, etc.

§ 32. The said board of rapid transit railroad commissioners may also from time to time, as in this section hereinafter provided, grant a right or rights, franchise or franchises or enter into a contract or contracts, upon application to said board of any railroad corporation owning or actually operating a railroad wholly or in part within the limits of the city in which the said board has power to act, or of any railroad corporation now or hereafter incorporated and for the purpose so declared in its articles of association, of constructing and operating a tunnel railroad or railroads in the said city to be connected with any railroad or railroads within the state of New York or any adjoining state and thereby forming a continuous line for the carriage of passengers and property between a point or points within and a point or points without the said city. If and when in the judgment of said board the public interests so demand, the said board may by the concurrent vote of six of its members fix and determine the route or routes by which any such railroad corporation making such application may connect with other railroads or the stations thereof, or with ferries, or may establish and construct or extend its lines within said city, and may authorize any such railroad corporation to lay an additional

track or tracks on, above, under or contiguous to a portion or the whole of the route or routes of its railway or railways within said city, or to acquire terminal or other facilities necessary for the accommodation of the traveling public on any street or place except the place now known as Battery park on which said railway shall be located; and may also authorize any such railroad corporation to lay its tracks and operate its railway to any terminal or terminals within the said city, and to construct and operate any such railroad or connecting railroad under any lands, streets, avenues, waters, rivers, parkways, highways or public places in the said city, with all necessary sidings, platforms, stations, facilities for access to the surface and other appurtenances and with the right to emerge to the surface upon private lands at the termini, and to transport over the same passengers or freight or both, and to run over the same either passenger trains or freight trains or mixed trains. The said board shall fix and determine the locations and plans of construction of the railways upon such route or routes and of such tracks and facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by the railroad corporation to which the grant shall be made, and such other terms, conditions and requirements as to the said board may appear just and proper,—provided, however, that every such determination, authorization and license shall be made upon the condition that the railroad corporation to which the grant shall be made shall, from the time of the commencement of the operation of any such railway or track or tracks under such determination, authorization or license, annually pay to the said city a sum or rental, and that the amount of such sum or rental for a period of not more than twenty-five years, beginning with such operation of any such railway track or tracks, shall be prescribed by the said board in such determination, authorization or license, and that every such determination, authorization and license shall provide for the readjustment of the amount of such sum or rental at the expiration of the period for which the same shall be so prescribed and for readjustment from time to time in the future

of the amount of such annual payment at intervals each of not more than twenty-five years. A certificate shall be prepared by the said board, attested by its seal and the signature of its presiding officer, setting forth in detail the action taken and grant made by the said board with respect to such connecting or extended route or routes and such tracks and facilities, and the terms, conditions and requirement aforesaid, including provisions as to the said annual payments and the future readjustments thereof. A like certificate shall be prepared in like manner upon every modification of the terms of the contract as hereinafter provided. Each such certificate shall prescribe the terms and conditions of the readjustments of such annual payments and may provide for the determination of such amount upon such readjustments by arbitration or by the supreme court. Such certificate shall be delivered to said railroad corporation upon the receipt by said board of a written acceptance of the terms, conditions and requirements of the grant, duly executed by said railroad corporation, so as to entitle it to be recorded. The said certificate shall be filed in the office of the secretary of state, and a duly certified copy thereof shall be filed in the office of the clerk of the county in which the said city is situated, and thereupon, and upon fulfilment by such railroad corporation, so far as it relates to such railroad or railroads, connections, additional track or tracks, or facilities, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section eighteen of article three of the constitution of this state, and upon fulfilment by such railroad corporation of such other terms, conditions and requirements enumerated in said certificate, as the said board may require to be fulfilled as a condition precedent to commencing said work, said railroad corporation shall in such cases possess in addition to its already existing franchises all the powers conferred by this act upon corporations specially formed thereunder, with respect to its railways authorized to be constructed as aforesaid, and when any route or routes, additional track or tracks, or terminal or other facilities, rights or franchises, shall be so fixed and determined, and a certificate as aforesaid shall have been



duly filed, such railroad corporation may construct the same with all the rights, and with like effect as though the same had been a part of the original route of its railway then in actual operation, or as may be provided in said certificate but in every case subject to all the provisions and conditions of the said certificate. Every certificate prepared by the board of rapid transit railroad commissioners as aforesaid when delivered to and accepted by such railroad corporation, shall be deemed to constitute a contract between the said city and said railroad corporation, according to the terms of the said certificate; and such contract shall be enforceable by the said board acting in the name of and in behalf of the said city or by the said corporation according to the terms thereof, but subject to the provisions of this act. The terms of such contract may from time to time, with the consent of such corporation, be modified by the board of rapid transit railroad commissioners by the vote of six of its members. But the construction and operation of such railroad or railroads connections, extensions, additional track or tracks, or facilities, are hereby authorized only upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon, above or under which it is proposed to construct or operate the same, be first obtained, provided that such local authorities shall, upon the presentation to them of any such grant or contract, without requiring the execution of any other agreements than those herein provided for, either approve or disapprove the same; and every such approval, shall be and be deemed to be, free of all limitations except those contained in this act or the constitution of the state. In case the consent of such property owners cannot be obtained, the appellate division of the supreme court in the department in which such railroad, railroads, connections, extensions, track or tracks or facilities are proposed to be constructed, may, upon application, in the same manner and on the same notice specified in section five of this act, appoint three commissioners, who shall determine after a hearing of all parties

interested, whether the same ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of such property owners. Nothing in this act contained shall be construed as interfering in any way with the jurisdiction, powers and duties of the board of railroad commissioners of the state of New York, nor shall any grant or contract be made hereunder affecting in any way the liabilities and obligations of the grantee or contracting railroad corporation with reference to taxation for state or local purposes. The state of New York shall not be liable for injuries to persons or property in connection with any railroad or other construction which may be authorized under the provisions of this act, nor shall the state of New York be liable for any damages in any event for any act or omission of the board of rapid transit railroad commissioners.

Thus amended by chap. 584, Laws of 1902.

**Removal of surface railway tracks, etc.; costs and charges; construction of tramways for removal of material.**

§ 33. Wherever or whenever the route selected by the said board of rapid transit railroad commissioners for the construction of such railway shall intersect, cross or coincide with any railway track or tracks occupying the surface of any street or avenues, or the construction or operation of said railway shall interfere with any pipes, sewers, subways, or underground conduits or ways, any corporation organized under this act, or any contractor or person constructing any railway or part of a railway under any contract made with the board of rapid transit railroad commissioners, is hereby authorized, for the purpose of constructing the said work, to remove the track or tracks of any such surface railway or railways, or any such pipes, sewers, subways, or underground conduits or ways, but the same shall be done in such manner as to interfere as little as possible with the practical operation or workings of such surface railway or railways, or the works or business of the owners of any such pipes, sewers, subways, or underground conduits or ways, and upon the con-

struction of such railways built under and in conformity with the provisions of this act, where such removals or changes have been made, said track or tracks, pipes, sewers, subways or underground conduits or ways shall be restored as nearly as may be to the condition in which they were previous to the construction of any such railway built under the provisions of this act, and any damages which such company or companies or owners may sustain shall be ascertained by a commission to be appointed the same as in the case where lands are taken for the purpose of a railway route or routes as hereinbefore provided in this act. For the purpose of the construction or operation of any railway under the provisions of this act, the board of rapid transit railroad commissioners may remove or cause to be removed, any pipes, sewers, subways or underground conduits or ways underneath any street, highway, park, or public place; provided, however, that the same shall be replaced as soon as practicable, either in the same position as before or in a secure and convenient position underneath such street, highway or public place, or underneath such other street, highway or public place as may be approved by the head of the department of public works of the city. Provided, however, that nothing in this section contained shall authorize the permanent removal from any street, highway, park or public place of any subways or conduits for the reception of electrical conductors which shall have been placed in such street, highway or public place prior to the construction of the rapid transit railroad, without the consent of the owner and lessee of such subway or conduit. All such removals and restorations shall be made at the proper cost and charge of such corporation, contractor or person as may have made such removals, but subject to the provisions of its, his or their contract, if any, with the board of rapid transit railway commissioners. Nothing contained in this act shall authorize any corporation formed thereunder to use the tracks of any horse railway. For the purpose of facilitating construction, and to diminish the period of occupancy of any street for the transportation of material, any contractor acting under

a contract made in pursuance of this act, or of any act supplementary hereto or amendatory hereof, may, with the approval of the board of rapid transit railroad commissioners, lay upon or over the surface of any street, temporary tramways, to be used only for the removal of excavated materials or the transportation of material for use in the construction; provided, however, that any such tramway shall be forthwith removed upon the direction of the board of rapid transit railroad commissioners; and provided, further, that this provision shall not be construed to authorize the construction or operation of any street railroad or to grant to any corporation, association or individual the right to lay down railroad tracks.

Thus amended by chap. 564, Laws of 1904.

§ 34. In case the people shall determine by vote, as provided in sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four, that any such railway or railways shall be constructed for and at the expense of such city, then and in that event it shall be the duty of said board to consider the routes, plans and specifications, if any, previously laid out and adopted by them or their predecessors, and for which the consents have been obtained referred to in section five of this act; and either to proceed with the construction of such railway or railways, and provide for the operation of the same, as hereinafter provided, or to change and modify the said routes, plans or specifications in such particulars as to said board may seem to be desirable, or from time to time and with or without reference to former routes or plans to adopt other or different or additional routes, plans and specifications for such railway or railways provided always, that in all cases in which any such change or modification shall be of such character as to require the consents thereto referred to in section five of this act; and in all cases where other or different routes or general plans may have been so adopted the said board shall proceed to secure the consents required to be obtained by section

five of this act as therein set forth. If any city has been or shall have been formed by the union or consolidation of one or more cities and other territory, and if in or for one of such cities so consolidated or united there shall have been a board of rapid transit railroad commissioners as provided in this act, the board of rapid transit railroad commissioners for the said city formed by such union or consolidation shall have for and within such city so formed all the powers, and be subject to all the duties and responsibilities, which at the time of such union or consolidation belonged to the board of rapid transit railroad commissioners of the former city so as aforesaid possessing such board for or in or with respect to such former city. If in such former city the vote of the qualified electors thereof shall have been for municipal construction of rapid transit road as prescribed in sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four, then the system of municipal construction of rapid transit railways provided for in this act and all of the provisions with respect thereto in this act contained shall be applicable to, and in full force within, all the districts or boroughs and throughout the entire area of the said city formed by such union or consolidation. The board of rapid transit railroad commissioners for any city shall, prior to the time of the final grant of any franchise under the provisions of this act or the making of a contract for construction and operation of any railroad under the provisions of this act have power to rescind and revoke any resolution or resolutions of such board adopting any routes or general plan for a rapid transit railroad adopted by such board and, in the discretion of such board, in lieu thereof to adopt new routes and general plan. Every such rescindment or revocation which shall have been heretofore made shall be deemed to have been lawful and authorized by this act as the same was prior to the present amendment hereof. As soon as such consents, where necessary, shall have been obtained for any rapid transit railroad or railroads, and the detailed plans and specifications

have been prepared as provided in section six of this act, the said board, for and in behalf of said city, shall enter into a contract with any person, firm or corporation, which in the opinion of said board shall be best qualified to fulfil and carry out said contract for the construction of such road or roads, including such galleries, ways, subways and tunnels for subsurface structures as said board may include in the plans for such road or roads under the authority of section six of this act; such road or roads, galleries, ways, subways, or tunnels to be constructed upon the routes and in accordance with the plans and specifications so adopted, for such sum or sums of money, to be raised and paid out of the treasury of said city, as hereinafter provided, and on such terms and conditions, not inconsistent with the aforesaid plans and specifications, as said board shall determine to be best for the public interests. The sum or sums of money to be paid for the construction of such road or roads shall be separately stated in the contract from the sum or sums to be paid for any galleries, ways, subways or tunnels for subsurface structures, the construction of which is provided for in such contract. And said board may in any case contract for the construction of the whole road, or all the roads provided for by the aforesaid plans in a single contract, or may by separate contracts executed from time to time, provide for the construction of parts of said road or roads or for the construction at first of two or more tracks over a part or parts of such road or roads and afterwards of one or more additional tracks over a part or parts of such road or roads as the necessities of said city and the increase of its population may in the judgment of said board require. The board may also, in a contract for a part of any such rapid transit railroad insert a provision that, at a future time, upon the requirement of the board, the contractor shall construct the remainder or any part of the remainder of said road, as the growth of population or the interests of the city may, in the judgment of the board, require, and may, in such contract, insert a provision of a method for fixing and ascertaining at such future time the amount to be

paid to the contractor for such additional construction, and to the end of such ascertainment, may provide for arbitration or for determination by a court of the amount of such compensation, or of any other details of construction which shall not be prescribed in the contract, but which shall be deemed necessary or convenient by said board. Any such contract may provide, if the public interest shall, in the opinion of the board, justify the provision, that the construction of any section or portion of the railroad included in such contract may, with the consent of the board, be suspended during the term of operation of the railroad as hereinafter mentioned, or any part of such term; provided, that during such term or part of term the lessee or contractor shall use, in lieu of such portion of the road, a railroad owned or leased by the lessee or contractor or a portion or section thereof, which shall, with the railroad or portion of railroad constructed by it under its such contract with the board form a continuous and convenient route. Every such contract shall also provide that the persons, firm or corporation so contracting to construct said road or roads shall, at his, or its own cost and expense, equip, maintain and operate said road or roads for a term of years to be specified in said contract, not more than fifty years, and upon such terms and conditions as to the rates or fare to be charged and the character of service to be furnished and otherwise as said board shall deem to be best suited to the public interests, and subject to such public supervision and to such conditions, regulations and requirements as may be determined upon by said board; provided that the right to use or operate any galleries, ways, subways or tunnels for subsurface structures, which are required to be constructed under said contract, shall not pass under the operating provisions of said contract; and further provided, that in case the contract shall provide for construction at different times or at intervals of time of different parts of a road, or if the contract shall provide for the use by the contractor of an existing railroad as part of continuous route as aforesaid, then and in any such case the board of rapid

transit railroad commissioners may, in its discretion, prescribe periods for the operation of the different parts of said road so that at one period of time in the future the board may be enabled to make a single operating contract or lease of the entire road. Every such contract shall further provide by proper stipulations and covenants on the part of the said city, that the said city shall secure and assure to the contractor, so long as the contractor shall perform the stipulations of the contract, the right to construct and to operate the road as prescribed in the contract, free of all right, claim or other interference, whether by injunction, suit for damages or otherwise, on the part of the owner, abutting owner, or other person. Every such contract shall further provide that the person, firm or corporation so contracting to construct, maintain and operate said road shall annually pay into the treasury of said city, as rental for the use of said road, a sum which shall not, except as hereinafter provided, be less than the annual interest upon the bonds to be issued by said city for the construction of said road as hereinafter provided for, and in addition to said interest, a further sum which shall be equal to a percentage of not less than one per centum upon the whole amount of said bonds; provided, that in estimating such annual interest and additional percentage there shall be deducted from the amount of said bonds the amount thereof issued to pay for rights, terms, easements, privileges or property other than lands acquired in fee, and also the amount thereof issued to pay for the construction of galleries, ways, subways and tunnels for subsurface structures. And provided, further, that the said contract may, in the discretion of the said board, provide that the payment of the said further sum of not less than one per centum upon the amount of said bonds as aforesaid, shall begin at a date not more than five years after the date at which the payment of rental shall begin, and that the said annual rate, instead of one per centum, may be a rate not less than one-half per centum for a further period not exceeding five years; but in case the contractor shall, during any year in which the said payment of one per centum shall be suspended or



reduced as aforesaid, earn a greater profit upon his, its or their net capital invested in the enterprise than five per centum, then the surplus of his, its or their earnings for such year up to the extent of at least one per centum shall be paid as rental as aforesaid. Such rental and the term for the operation of the railroad included in any such contract shall begin, as to said road, or any section thereof, when the same shall be declared by the board of rapid transit railroad commissioners to be completed and ready for operation. For the purpose of estimating such one per centum per annum upon the ascertainment of the amount of such rental, there shall be included such portion of the said bonds as shall have been issued to pay interest on bonds theretofore issued under the provisions of this act, except bonds issued to pay for rights, terms, easements, privileges or property other than lands acquired in fee. The aforesaid annual rental shall be paid at such times during each year as said board shall require, and shall be applied first to the payment of the interest on said bonds, as the same shall accrue and fall due, and the remainder of said rental not required for the payment of said interest shall be paid into the sinking fund, for the payment of the city debt, if there shall be such sinking fund in said city, or, if there be none such, then said balance of said rental shall be securely invested, and, with the annual accretions of interest thereon, shall constitute a sinking fund for the payment and redemption at maturity of the bonds issued, as hereinafter provided. Any such contract may also provide for a renewal or renewals of the lease of said road upon the expiration of the original term and of any renewals of the same, upon such terms and conditions as to said board may seem just and proper, and may also contain provisions for the valuation of the whole or a part of the property of said contracting person, firm or corporation, employed in and about the equipment, maintenance and operation of said road, and for the purchase of the same by the city, at such valuation, or a percentage of the same, should said lease not be so renewed at any time. Any such contract may provide for the construction of said road in sections, and, except as herein otherwise provided,

every such contract shall specify when the construction of the railroad included therein or the several sections of the same shall be commenced, and, in each case, the date of completion. It shall also state the date on which the operation of the road, or of any section thereof, shall commence. The person, firm or corporation so contracting for the construction, equipment, maintenance and operation of the railroad or railroads included in any such contract shall give a bond to said city, in such amount as said board of rapid transit railroad commissioners shall require, and with sureties to be approved by said board, who shall justify each in double the amount of his liability upon said bond. Said bond shall be a continuing security, and shall provide for the prompt payment by said contracting person, firm or corporation, of the amount of annual rental specified in the aforesaid contract, and also for the faithful performance by said contracting person, firm or corporation of all the conditions, covenants and requirements specified and provided for in said contract. In lieu of said continuing bond such contracting person, firm or corporation may, upon the approval of the said board, deposit with the comptroller or other chief financial officer of such city cash equal in amount to the entire amount of the said bond or securities which are lawful for the investment of the funds of savings banks within this state and are worth not less than the entire amount of such bond. If such bond shall have been given then after the deposit of cash and securities in lieu thereof as aforesaid, and the approval thereof by the said board, the said bond shall be surrendered by the said city to the said contracting person, firm or corporation duly cancelled by the comptroller or other chief financial officer of the said city. In the event of the deposit of cash or securities as aforesaid, the contract may provide for the payment to the contractor of the income of such securities or of interest upon such moneys at a rate not higher than the highest rate received by the city upon the deposit of its funds with banks, and may also provide for withdrawal of securities so deposited upon deposit of cash or securities of the same value, provided that all such securities shall be such as are

so lawful for the investment of the funds of savings banks. The said contracting person, firm or corporation shall also simultaneously with the execution and delivery of every such contract, deposit with the comptroller or other chief financial officer of such city the sum of one million dollars in cash or in securities of a value not less than one million dollars, which securities shall be of the character of those in which the savings banks of this state are authorized by law to invest moneys, and shall be approved by the board of rapid transit railroad commissioners, which cash or securities shall, under such terms and conditions as shall be provided in the said contract, be further security for the faithful performance by such contracting person, firm or corporation of all the covenants, conditions and requirements specified and provided for in said contract relating to the construction and equipment of said road. If in any case the cost of construction embraced in a contract is estimated by the said board of rapid transit railroad commissioners at the sum of ten million dollars or less, the contract may in the discretion of the said board fix the amount of such deposit at such a sum less than one million dollars as the said board may determine, but in no case shall such deposit be less than ten per centum of the contract price of such construction. The city in and for which said road shall be constructed shall also have a first lien upon the rolling stock and other property of said contracting person, firm or corporation, constituting the equipment of said road and used or intended for use in the maintenance and operation of the same, as further security for the faithful performance by such contracting person, firm, or corporation of the covenant, conditions and agreements of said contract, on his, their or its part to be fulfilled and performed, and in case of the breach of any such covenant, condition and agreement said lien shall be subject to foreclosure by action, at the suit of such city, in the same manner, as far as may be, as is then provided by law in the case of foreclosure by action of mortgages on real estate. The said board of rapid transit railroad commissioners may, however, from time to time, by a concurrent vote of six of the members of said

board, relieve from such lien, any of the property to which the same may attach, upon receiving additional security, which may be deemed by said board so voting to be the equivalent of that which it is proposed to release and otherwise upon such terms as to such board so voting shall seem just. The said board may in or by any such contract and in its discretion require, and this act, as the same was prior to the present amendment thereof shall be deemed to have authorized the said board to have heretofore required any other security upon any such contract. Upon the completion of the construction and equipment of the railroad or railroads provided in any such contract to the satisfaction of said board, and when the operation of the same shall have commenced pursuant to said contract, it shall be the duty of the comptroller or other chief financial officer to pay to the said contracting person, firm or corporation said sum in cash or the said securities so to be deposited as above provided as security for construction and equipment, and the said contracting person, firm or corporation shall also be then entitled to be credited upon the rental which he, they or it shall have contracted to pay to said city for the use of said road a sum which shall be equal, as the case may be, either to the interest on the sum so to be deposited for the time of such deposit at the rate of interest provided for in the bonds which shall have been issued and sold by the city to provide for the construction of said road, or to the interest, dividends or other income which said city shall have received from the said securities. The said contract shall further provide that in case of default in paying the annual sum or rental therein provided for, or in case of the failure or neglect on the part of said contracting person, firm or corporation, faithfully to observe, keep and fulfill the conditions, obligations and requirements of said contract, the said city, by its board of rapid transit railroad commissioners, may take possession of said road and the equipment thereof, and as the agent of said contracting person, firm or corporation, either maintain and operate said road, or enter into a contract with some other person, firm or corporation for the maintenance and operation thereof, retaining out of the proceeds of such operation, after

the payment of the necessary expenses of operation and maintenance, the annual rental hereinbefore referred to, and paying over the balance, if any, to the person, firm or corporation with whom the first contract above mentioned was made, and if such proceeds of the operation of said road, after the payment of the necessary expenses of maintenance and operation, including the keeping in repairs of the rolling stock and other equipment, shall in any year be less than the annual rental hereinbefore referred to and provided in the first contract, then, and in that case, the said contracting person, firm or corporation, and his or its bondsmen, shall be and continue (but in the case of any bond hereafter executed each bondsman only to the extent of the liability expressly assumed by him upon the bond) jointly and severally liable to the aforesaid city for the amount of such deficiency, until the end of the full term for which the said first contract was originally made. No contract entered into under authority of this act shall be assigned without the written consent of the said board of rapid transit railroad commissioners, concurred in by six members of said board. The said contracting person, firm or corporation, with such written consent and upon such terms and conditions as the said board shall prescribe, may either assign the whole of such contract or separately the right or obligation to maintain and operate the said road or roads for the remainder of the term of years specified in such contract and all rights with respect to such maintenance and operation, or included in the leasing provisions of such contract, but subject to all the terms and conditions therein stated; provided, however, that the assignee or assignees shall, in and by such assignment, assume all of the obligations of the original contractor under or with respect to such leasing provisions and all obligations which relate in any way to such operation and maintenance, and provided, further, said board before giving its consent shall be satisfied that the pecuniary responsibility of the assignee or assignees shall be no less than that of such original contractor; and provided, further, that all of the security or securities which the city shall have received for the performance by the original

contractor of such leasing provisions and of all provisions of the contract with respect to such operation and maintenance shall continue in full force as provided in such contract, or any modification thereof, as security for the performance by such assignee of all obligations of the contractor under or with respect to such leasing provisions and such maintenance or operation. It shall be deemed to be part of every such contract that, in case the board of rapid transit railroad commissioners shall cease to exist, the legislature may provide what public officer or officers of the city shall exercise the powers and duties belonging to the board of rapid transit railroad commissioners under or by virtue of any such contract, and that in default of such provision, such powers and duties shall be deemed to be vested in the mayor of the city. Every such contract shall provide that if the contracting person, firm or corporation shall fail to construct or operate the railway according to the terms of the contract, and shall, after due notice of its default, omit for more than a reasonable time to comply with the provisions of such contract, the board of rapid transit railroad commissioners may bring an action in the name and in behalf of the city to forfeit and vacate all the rights of such contracting person, firm or corporation under such contract, and for damages and otherwise as may be necessary for the sufficient and just protection of the rights of the city; or may, upon such terms as to the board of rapid transit railroad commissioners seem just, and with such person or corporation as to the said board may seem proper, make another operating contract and lease of the said road for the residue of the term of the contractor in default; and may bring action in the name and on behalf of the city to recover from the contractor the amount due from the contractor, less the amount which shall have been received by the city, under or by virtue of such new contract, and for all other damages sustained by the city by reason of such default. The said board may by any such contract determine when and how the work of construction of the rapid transit railroad or railroads included therein shall proceed. Any existing railway corporation owning or actually operating a railway wholly or in

part within the limits of the city in and for which said board has power to act, and approved by the said board of rapid transit railroad commissioners, shall be competent and is hereby authorized to enter into any contract for the construction and operation of any railway pursuant to the provisions of this chapter; or, after such a contract shall have been made, shall be competent and is hereby authorized, with the approval of the said board, to contract with the original contractor or his assignee or assignees for the maintenance and operation (including the equipment thereof) of any railway constructed or in process of construction pursuant to the provisions of this chapter and shall have all the powers necessary to the due performance of such contract. A corporation may be organized under the railroad law of this state, for the purpose of undertaking the construction and operation of a railway pursuant to the provisions of this act, or for the purpose of maintaining and operating a railway (including the equipment thereof) already constructed or in process of construction pursuant to the provisions of this chapter, or for both such purposes; and any corporation so organized, upon the approval in writing of the said board of rapid transit railroad commissioners, shall, in addition to the powers conferred by the general act under which such company is organized, be empowered, and is hereby authorized to enter into any contract permitted by law for the construction and operation, or for the maintenance and operation when constructed (including the equipment thereof if desired), as the case may be, of any such railway constructed or to be constructed at the expense of the city as in this act provided. The certificate of such approval shall be filed in the office of the secretary of state and a copy thereof certified to be a true copy by the secretary of state or his deputy shall be evidence of the fact therein stated. A corporation so organized shall not be required to procure the consent of the board of railroad commissioners of the state as provided for in section fifty-nine of the railroad law. Where in this section the consents referred to in section five of this act are mentioned, they shall be construed to include any consent given by the commissioners appointed by the

general term or appellate division of the supreme court, and confirmed by the said general term or appellate division in lieu of the consent of property owners as hereinbefore provided.

Thus amended by chap. 599, Laws of 1905, section 3 of said chapter 599, being as follows:

§ 3. (Chap. 599, Laws of 1905.) Nothing in this act contained shall be held to repeal, modify or alter any provision of the act hereby amended with respect to any railroad or railroads constructed, constructing or contracted for thereunder when this act takes effect; but the act hereby amended shall be and continue in full force and effect in respect of such railway or railways so constructed, constructing or contracted for as if this act had not been passed.

§ 35. The equipment to be supplied by the person, firm or corporation operating any such road, shall include all rolling stock, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements and devices of every nature whatsoever used for the generation or transmission of motive power and including all powerhouses, and all apparatus and all devices for signaling and ventilation.

Thus amended by chap. 599, Laws of 1905, section 3 of said chapter 599 being as follows:

§ 3 (Chap. 599, Laws of 1905.) Nothing in this act contained shall be held to repeal, modify or alter any provision of the act hereby amended with respect to any railroad or railroads constructed, constructing or contracted for thereunder when this act takes effect; but the act hereby amended shall be and continue in full force and effect in respect of such railway or railways so constructed, constructing or contracted for as if this act had not been passed

#### Advertising for proposals.

§ 36. The said board of rapid transit railroad commissioners before awarding any contract or contracts shall advertise for proposals for such contracts by a notice to be printed twice a week for three successive weeks in no less than four of the daily newspapers published in said city, and in such newspapers published elsewhere than in said city as said board shall determine. Such notice shall set forth and state the points within said city, between which said road or roads is or are to run, the general method of construction, the route or routes to be followed, the term of years for which it is proposed to make such contract, and such other details and specifications as said board shall deem to be proper. Said notice shall state the time and place at which



said proposals will be opened, and the said board shall attend at the time and place so specified, and shall publicly open all proposals that shall have been received, but the said board shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner hereinbefore provided, or may accept any of such proposals as will, in the judgment of such board, best promote the public interest, and award a contract accordingly.

Thus amended by chap. 519, Laws of 1895.

**Issue of bonds for construction of railroad by city; acquisition of lands, etc.**

§ 37. For the purpose of providing the necessary means for such construction, at the public expense, of any such road or roads and the necessary means to pay for lands, property, rights, terms, privileges and easements, whether of owners, abutting owners, or others, which shall be acquired by the city for the purposes of the construction or the operation of such road or roads as hereinafter provided, and of meeting the interest on the bonds in this section hereinafter provided for accruing thereon prior to the completion and readiness for operation of the portion of such road or roads for the construction of which such bonds shall have been respectively issued, the board of estimate and apportionment, or other local authority in said city, in which such road or roads are to be constructed, having power to make appropriations of moneys to be raised by taxation therein, from time to time, and as the same shall be necessary, and upon the requisition of said board of rapid transit railroad commissioners, shall direct the comptroller, or other chief financial officer of said city, and it shall thereupon become his duty, to issue the bonds of said city at such a rate of interest, not exceeding three and one-half per centum per annum, as said board of estimate and apportionment, or other local authority directing the issue of such bonds, may prescribe. Said bonds shall provide for the payment of the principal and interest in gold coin of the United States of America. They shall not be sold for less than the

par value thereof, and the proceeds of the same shall be paid out and expended for the purposes for which the same are issued, upon vouchers certified by said board of rapid transit railroad commissioners. Said bonds shall be free from all taxation for city and county purposes, and shall be payable at maturity out of the sinking fund for the payment of the city debt, if there be such a sinking fund of said city; but if there be no such sinking fund, then out of a sinking fund to be established and created out of the annual rentals of said road as hereinbefore provided. But this provision that the said bonds shall be payable out of such sinking fund shall not diminish or affect the obligation of said city as a debtor upon said bonds, or any other right or remedy of any holder or owner of any such bonds, to collect the principal or interest thereof. The amount of bonds authorized to be issued and sold by this section shall not exceed the limit of amount which shall be prescribed by the board of estimate and apportionment or such other local authority having power to make appropriations of moneys to be raised by taxation; and no contract for the construction of such road or roads shall be made unless and until such board of estimate and apportionment or such other local authority shall have consented thereto and prescribed a limit to the amount of bonds available for the purposes of this section which shall be sufficient to meet the requirements of such contract in addition to all obligations theretofore incurred and to be satisfied from such bonds.

Thus amended by chap. 562, Laws of 1904.

#### Modification of contracts and plans.

§ 38. The board of rapid transit railroad commissioners, for and on behalf of the said city in which such road or roads may be constructed, may, from time to time, with the concurrence of six members of said board and the consent, in writing, of the bondsmen or sureties of the person, firm or corporation which has contracted to construct, equip, maintain and operate said road or roads, or any of them, agree with said contracting person, firm or corporation upon changes in and modifications of said con-

tract; or of the plans and specifications upon which said road or roads is or are to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section five of this act shall be made without the further consent and authorization provided for in said section; but in no event shall the annual rental to be paid to said city, for the use of said road, be reduced below the minimum rate hereinbefore provided.

Thus amended by chap. 519, Laws of 1895.

#### Elevated railways in lieu of bridge approaches.

§ 38a. The board of directors of any company incorporated for the purpose of constructing, maintaining or operating a bridge or bridges connecting a city of more than one million inhabitants with any other city in this state, and by the act of incorporation of which authority shall have been conferred or intended to be conferred, to construct, maintain or operate, as a part of or in connection with its bridge, an approach or approaches thereto extending generally in an easterly and westerly direction, may determine in lieu of constructing such approach or approaches, to build, maintain and operate an elevated railway, the route of which shall be coincident with the route of such approach or approaches as defined in said act, and shall adopt a general plan for the construction thereof, and which shall show the general mode of operation, and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue, or other public place is to be encroached upon and the property abutting thereon affected, a copy of which plan shall be transmitted to the common council of the city in which the same is to be located. Such proceedings shall thereupon be had by such common council as are provided by section five of this act, as though such plans had been transmitted by the rapid transit commissioners as contemplated in said section. Provided, that where in any such city the exclusive control of any street, route, highway or avenue, which is to be occupied by any railway or railways constructed under the provisions of this section is by law vested in any local authority other than the common council

of such city, the approval of the aforesaid plans, and consent to the construction of a railway thereunder shall be given by such local authority in place of, and if required in addition to such approval and consent by such common council, and with like effect. Upon obtaining the approval and consent of the local authorities as in said section provided, the said board of directors shall take the necessary steps to obtain, if possible, the consent of the property owners along the line of the said route or routes, and all proceedings in respect of such consents or when such consents cannot be obtained shall be similar in all respects to the proceedings in said section provided. Any consent of the local authorities to construct or operate such railway shall be given only upon the condition that the rate of fare upon such elevated railway shall not exceed five cents for each passenger, and that payment of such fare shall entitle each passenger to or from said elevated railroad to free transit across the bridge or bridges with which it is intended to connect the same. When the consents of the local authorities and the property owners, or in lieu thereof, the authorization of the supreme court upon the report of the commissioners shall have been obtained, and the said company shall have accepted such condition it shall have all the powers of corporations formed under this act, it shall be authorized to build, construct, maintain and operate such elevated railway or railways, but all provisions of this act, or of any act requiring the sale of the right, privilege and franchise of constructing, maintaining and operating such railway or railways, or requiring a corporation or corporations to be organized for the purpose of acquiring such right, privilege and franchise, and all other provisions of this act or of any act inconsistent with this section, are hereby declared inapplicable to such elevated railway and to such company. The entire route of any elevated railway constructed under the provisions of this section shall not exceed three miles in length, nor shall any part of said railway except at the termini thereof be less than sixteen feet above any street, avenue or public place, or less than fourteen feet above any existing elevated railway which may be crossed, intervened or intersected

thereby. The said railway may be located and constructed so as to cross any intersecting street, avenue, highway or place otherwise exempted, except that no public park shall be occupied or crossed thereby, the structure of such elevated railway shall be liable to taxation as provided by law for similar structures.

Thus amended by changing the number of the section from 38 to 38a, by chap. 519, Laws of 1895. This section was added to the law by chap. 102, Laws of 1892.

#### Acquisition of land, etc.

§ 39. For the purpose of constructing or operating any road for the construction and operation of which a contract shall have been made by the board of rapid transit railroad commissioners, including necessary stations and station approaches, or for the purpose of operating or securing the operation of the same free of interference and right of interference and of action and right of action for damages and otherwise, whether by abutting owners or others, or to provide, lay or maintain conduits, pipes, ways or other means for the transmission of electricity, steam, water, air or other source or means of power or of signals or of messages necessary or convenient for or in the construction or operation of such road, or for the transportation of materials necessary for such construction or operation, or to provide a temporary or permanent way or course for any such conduit, pipe or other means or source of transportation, said board for and in behalf of said city may acquire, by conveyance or grant to said city to be delivered to the said board and to contain such terms, conditions, provisos and limitations as the said board shall deem proper, or by condemnation or other legal or other proceedings, as in this act provided, any real estate and any rights, terms and interest therein, any and all rights, privileges, franchises and easements, whether of owners or abutters, or others to interfere with the construction or operation of such road or to recover damages therefor, which, in the opinion of the board, it shall be necessary to acquire or extinguish for the purpose of constructing and operating such road free of interference or right of interference. The word "property" hereinafter used shall be

deemed to include any such real estate, and any rights, terms and interest therein, and any such rights, privileges, franchises and easements, whether of owners, abutting owners, or others. Where any contractor for the construction or operation of any such railroad shall require any property for such construction and operation, such property shall be deemed to be required for a public purpose; and with the approval of the said board of rapid transit railroad commissioners the same may be acquired by the said contractor in all respects as such property may be acquired by the said board of rapid transit railroad commissioners for the said city, and all proceedings to acquire the said property shall be conducted under the direction and subject to the approval of the rapid transit railroad commissioners. It shall be the duty of the board whenever any property which the city shall have acquired as provided in this act shall be unnecessary for rapid transit purposes, to sell and convey the same in behalf of said city, provided, however, that no such sale or conveyance shall be made except with the approval of the commissioners of the sinking fund of such city or, if there be no commissioners of the sinking fund, then the other board or public body thereof having power to sell or lease city property, and provided further that the proceeds of any such sale or conveyance shall, under the direction of the said board, of rapid transit railroad commissioners, be applied either to the purchase of other property necessary for rapid transit purposes or shall be applied in all respects as the payments of rental to be made by the contractor as provided in this act. Whenever the said rapid transit railroad commissioners for and in behalf of the city shall have acquired or shall hereafter acquire an easement in property by conveyance or grant for the purpose of the operation or construction of a rapid transit railroad, it may in behalf of the city and as part consideration for the grant or conveyance of the easement, enter into an agreement with the grantor of such easement or right of way, giving to such grantor or his assigns, the right of lateral or other support through, in, or under the said property, or any adjoining lands or space occupied by said rapid transit

railroad for any building erected or to be erected upon the land over which the easement or right of way has been obtained for the support and maintenance of any such building or buildings, provided that any structure that shall be built for the support of any such building or buildings shall be approved by said board and shall not extend in or under any street beyond the curb lines as fixed by the ordinances of the board of aldermen or other legislative body of such city.

Thus amended by chap. 564, Laws of 1904.

#### Entry upon lands and property.

§ 40. It shall and may be lawful for said board, and for all persons acting under its authority, to enter in the daytime into and upon any and all lands and property which it shall deem necessary to be acquired, or to which there may be appurtenant rights, terms, franchises, easements or privileges which it shall deem necessary to be acquired or extinguished by said city, for the purpose of making the maps or surveys hereinafter mentioned, and also to enter in like manner and for the same purpose upon any property adjacent to and within five hundred feet of the property to be so surveyed; and the said board shall cause three similar maps or plans to be made of each parcel of property which it may deem necessary so to be acquired, or to which there may be appurtenant rights, terms, franchises, easements or privileges necessary so to be acquired or extinguished, designating each of said parcels by a number, and upon each map or plan so made or in a memorandum accompanying the same and to be deemed part thereof the said board shall cause to be clearly indicated the particular estate or estates, rights, terms, privileges, franchises or easements to be acquired or extinguished for the purposes of this act, in relation to each and every piece or parcel of property described upon said map or plan. The said board shall have power to cause a triplicate set of maps or plans and memoranda as herein provided for to be made as often and at such times as said board shall determine, and each set of maps or plans and memoranda so made shall contain the particulars above enumerated within such district as said board

shall in each case provide. The maps or plans and memoranda herein provided for, when approved and adopted by said board, shall have written thereon a certificate of such approval, signed by the members of said board adopting and approving the same, and one copy thereof shall be filed in the department of public works, or other chief executive department having principal charge of the streets, there to remain as a public record, and the other two of said maps or plans and memoranda shall be transmitted to the counsel to the corporation or other principal legal adviser of said city. The said board may from time to time make and file further maps or plans and memoranda amending those already filed, but not so as to defeat or impair any property or interest which shall have been already acquired, or to revive any interest or right which may have been already extinguished by the said city.

Thus amended by chap. 519, Laws of 1895.

#### Board may direct proceedings to be taken.

§ 41. Whenever and as often as the said board shall deem it to be necessary and proper that the said city should acquire any such property and shall have caused to be made, as provided in the last preceding sections, the maps or plans and memoranda specifying and defining the said property to be acquired, or to which are appurtenant the rights, terms, franchises, easements or privileges to be acquired or extinguished, and shall have certified, filed and transmitted the several copies of such maps or plans as in the last section prescribed, the said board may direct the counsel to the corporation or other principal legal adviser of said city, to take legal proceedings to acquire the same for the said city, and the said counsel to the corporation, or other principal legal adviser, shall thereupon take proceedings as in this act provided.

Thus amended by chap. 519, Laws of 1895.

#### Filing of maps.

§ 42. The said counsel to the corporation, or other principal legal adviser of said city, shall cause one of the maps or plans,



so as aforesaid transmitted to him, to be filed in the office of the register of the county, or if there be no such register, then in the office of the county clerk of the county in which said city is situated. The map, hereinafter denominated the third map, being the other one of the two so as aforesaid transmitted to said counsel to the corporation, or other legal adviser, shall be disposed of as hereinafter provided.

This section added by chap. 752, Laws of 1894.

#### **Application for commissioners of appraisal.**

§ 43. After the said set shall have been filed as hereinbefore provided in the office of the register or county clerk of said county, the said counsel to the corporation, or other principal legal adviser, for and on behalf of the said city, shall, and he may from time to time, upon first giving the notice required by the next section of this act, apply to the supreme court at any special or general term thereof, to be held in the judicial district in which said city is situated, for the appointment of commissioners of appraisal. Upon each such application he shall present to the court a petition, signed by a majority of the members of said board and verified in the manner prescribed by law for the verification of pleadings, according to the practice of said court, setting forth the action or determination theretofore taken or had by said board, with respect to the property to be acquired, and the filing of said maps or plans and memoranda and praying for the appointment of such commissioners of appraisal. Such petition shall contain a general description of all the property to, or in or over or appurtenant to which any title, interest, right, franchise, easement, term or privilege is sought to be acquired or extinguished, and of every right, franchise, easement, or privilege sought to be acquired, by the said city for public purposes, each lot or parcel being more particularly described by a reference to the number of said lot or parcel as given on said maps, and the title, interest, right, easement, term or privilege sought to be acquired, or extinguished, to or in or over or appurtenant to each of said lots or parcels shall be stated in said petition.

Thus amended by chap. 519, Laws of 1895.

shall in each case provide. The maps or plans and memoranda herein provided for, when approved and adopted by said board, shall have written thereon a certificate of such approval, signed by the members of said board adopting and approving the same, and one copy thereof shall be filed in the department of public works, or other chief executive department having principal charge of the streets, there to remain as a public record, and the other two of said maps or plans and memoranda shall be transmitted to the counsel to the corporation or other principal legal adviser of said city. The said board may from time to time make and file further maps or plans and memoranda amending those already filed, but not so as to defeat or impair any property or interest which shall have been already acquired, or to revive any interest or right which may have been already extinguished by the said city.

Thus amended by chap. 519, Laws of 1895.

**Board may direct proceedings to be taken.**

§ 41. Whenever and as often as the said board shall deem it to be necessary and proper that the said city should acquire any such property and shall have caused to be made, as provided in the last preceding sections, the maps or plans and memoranda specifying and defining the said property to be acquired, or to which are appurtenant the rights, terms, franchises, easements or privileges to be acquired or extinguished, and shall have certified, filed and transmitted the several copies of such maps or plans as in the last section prescribed, the said board may direct the counsel to the corporation or other principal legal adviser of said city, to take legal proceedings to acquire the same for the said city, and the said counsel to the corporation, or other principal legal adviser, shall thereupon take proceedings as in this act provided.

Thus amended by chap. 519, Laws of 1895.

**Filing of maps.**

§ 42. The said counsel to the corporation, or other principal legal adviser of said city, shall cause one of the maps or plans,

so as aforesaid transmitted to him, to be filed in the office of the register of the county, or if there be no such register, then in the office of the county clerk of the county in which said city is situated. The map, hereinafter denominated the third map, being the other one of the two so as aforesaid transmitted to said counsel to the corporation, or other legal adviser, shall be disposed of as hereinafter provided.

This section added by chap. 752, Laws of 1894.

#### **Application for commissioners of appraisal.**

§ 43. After the said set shall have been filed as hereinbefore provided in the office of the register or county clerk of said county, the said counsel to the corporation, or other principal legal adviser, for and on behalf of the said city, shall, and he may from time to time, upon first giving the notice required by the next section of this act, apply to the supreme court at any special or general term thereof, to be held in the judicial district in which said city is situated, for the appointment of commissioners of appraisal. Upon each such application he shall present to the court a petition, signed by a majority of the members of said board and verified in the manner prescribed by law for the verification of pleadings, according to the practice of said court, setting forth the action or determination theretofore taken or had by said board, with respect to the property to be acquired, and the filing of said maps or plans and memoranda and praying for the appointment of such commissioners of appraisal. Such petition shall contain a general description of all the property to, or in or over or appurtenant to which any title, interest, right, franchise, easement, term or privilege is sought to be acquired or extinguished, and of every right, franchise, easement, or privilege sought to be acquired, by the said city for public purposes, each lot or parcel being more particularly described by a reference to the number of said lot or parcel as given on said maps, and the title, interest, right, easement, term or privilege sought to be acquired, or extinguished, to or in or over or appurtenant to each of said lots or parcels shall be stated in said petition.

Thus amended by chap. 519, Laws of 1895.

**Publication of notice, or service of petition for application for appointment of commissioners of appraisal.**

§ 44. The said counsel to the corporation, or other principal legal adviser, shall give or cause to be given notice by publication in two public newspapers published in the said city, or, instead of such publication, may in his discretion cause service of the petition and notice of his intention to make application to the said court for the appointment of such commissioners of appraisal, to be made in the same manner prescribed by section three thousand three hundred and sixty-two of the code of civil procedure, as amended by chapter ninety-five of the laws of eighteen hundred and ninety, such notice if published as aforesaid shall state the time and place of such application, shall briefly state the object of the application, and shall briefly describe the property sought to be acquired or affected, and refer to a fuller statement to be filed in the office of the board of rapid transit railroad commissioners, in which shall be set forth the location and boundaries of the several lots or parcels of property, and rights, franchises, easements or privileges sought to be taken or affected, and a brief statement as to each of said lots or parcels, of the title, interest, rights, easements, terms or privileges therein or appurtenant thereto sought to be acquired or extinguished, with a reference to the dates and places of filing the said maps or plans and memoranda shall be a sufficient description of the property sought to be so taken or affected. Such notice in case of publication as aforesaid shall be so published, in said newspapers twice a week for six weeks immediately previous to the time fixed in said notice for the presentation of each petition.

Thus amended by chap. 533, Laws of 1902.

**Order for appointment of commissioners.**

§ 45. At the time and place mentioned in said notice, unless the said court shall adjourn said application to a subsequent date, and in that event at the time to which the same may be adjourned, the court, upon due proof to its satisfaction of the

publication aforesaid, and upon filing the said petition, shall make an order for the appointment of three disinterested freeholders, residents in said city, as commissioners of appraisal, to ascertain and appraise the compensation to be made to the owners of property so to be taken or extinguished for the purposes indicated in this act. Such order shall fix the time and place for the first meeting of the commissioners.

This section added by chap. 752, Laws of 1894.

#### Oath of commissioners.

§ 46. The said commissioners shall take and subscribe the oath required by the twelfth article of the constitution of the state of New York, and shall forthwith file the same in the office of the clerk of the county in which said city is situated.

This section added by chap. 752, Laws of 1894.

#### City seized in fee of land upon filing oaths.

§ 47. On filing said oath in the manner provided in the last section, the said city shall be and become seized and possessed in fee or absolute ownership of all those parcels of property, rights, terms, franchises, easements and privileges which are in the maps or plans and memoranda referred to in section forty of this act, described as parcels of property, rights, franchises, easements, or privileges which are to be acquired, and also shall become seized and possessed of all the rights, terms, franchises, easements or privileges appurtenant to any lots or parcels of property indicated on said maps or plans as parcels in regard to which it is deemed necessary to acquire such rights, terms, franchises, easements or privileges, or the said rights, terms, franchises, easements or privileges shall be extinguished as the case may be; and the said board for the said city, may immediately or at any time or times thereafter take possession or enter into the enjoyment of the said property, rights, terms, franchises, easements and privileges or of any part or parts thereof without any suit or proceeding at law for that purpose and the said board for the said city, or any person or persons acting under their or its authority, may enter upon and use, occupy,

and enjoy in perpetuity all the parcels of property and all the rights, terms, franchises, easements or privileges appurtenant to any of the parcels of property and all rights, franchises, easements, and privileges, described on said maps or plans or in said memoranda, for any of the purposes authorized and provided for by this act. But on such filing of the said oath the said city shall be and become forthwith liable to the respective owners of the several parcels of property and the several rights, terms, franchises, easements and privileges appertaining thereto, and of the said rights, franchises, easements, and privileges acquired as aforesaid, for the true and respective values thereof, together with interest thereon from the time of filing the said oath, provided, however, that no such interest shall be payable to any owner of any such property, right, term, franchise, easement or privilege during any period during which the said city or the said board of rapid transit railroad commissioners may by any resistance, whether by legal proceedings or otherwise of such owner or with his authority, be prevented from taking possession thereof or enjoying the same; and provided further, that no action shall be brought to recover the amount of such value or interest unless within eighteen months after the filing of such oath, a report shall not have been duly made by commissioners of appraisal as herein provided, or such report shall not have been confirmed by the supreme court as herein provided, so that the said city shall be liable to forthwith pay the amount by such report ascertained to be due for such value or interest.

Thus amended by chap. 519, Laws of 1895.

#### Powers of commissioners.

§ 48. Any one of said commissioners of appraisal may issue subpoenas and administer oaths to witnesses, and they or any one of them, in the absence of the others, may adjourn the proceedings, from time to time in their discretion, but they shall continue to meet from time to time as may be necessary to hear, consider and determine upon all claims which may be presented to them under any of the provisions of this act. In case of the death, resignation, refusal or neglect to serve of any

commissioner of appraisal, the remaining commissioner or commissioners shall, upon ten days' notice, to be given by advertisement in the newspapers mentioned in section forty-four of this act, apply to the supreme court, at a special or general term thereof, to be held in the judicial district in which said city is situated, for the appointment of a commissioner or commissioners to fill the vacancy or vacancies so occasioned. In case of the death, resignation or refusal to serve of all the commissioners of appraisal, the said counsel to the corporation or other principal legal adviser to said city shall, on giving the notice required in this section, apply to the said court for the appointment of other commissioners of appraisal. It shall be the duty of the commissioners of appraisal to procure from the counsel to the corporation or other principal legal adviser the third set of maps or plans and memoranda provided for in sections forty and forty-two of this act. They shall view the property laid down on said map, and shall hear the proofs and allegations of any owner, lessee or other person in any way entitled to or interested in the property to be acquired or extinguished, or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the said city. They shall reduce the testimony, if any, taken before them to writing, and after the testimony is closed, they, or a majority of them, all having considered the same, and having an opportunity to be present, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made by the said city to the owners or persons interested in the property acquired or extinguished by said proceedings. The said commissioners of appraisal shall make reports of their proceedings to the supreme court, as in the next section provided with the minutes of the testimony taken before them, if any, and they shall be entitled to the payment hereinafter provided for their services and expenses, to be paid from the fund hereinafter specified. The said commissioners may make a single report or may make reports from time to time as they shall reach their several decisions as to different parcels of property.

Thus amended by chap. 519, Laws of 1895.

**Report of commissioners.**

§ 49. The said commissioners shall prepare a report or reports, to which shall be annexed the third set of maps or plans and memoranda referred to in section forty-two of this act and therein denominated the third set or a copy thereof certified by them. Each said report shall contain a brief description of the property so taken or affected, with a reference to the map upon which the same is required to be indicated; a statement of the sums estimated and determined upon by them, as a just compensation for the same to be made by the city to the owners or persons interested therein and the names of such owners and persons; but in all and each and every case or cases where one or more of the owners and persons interested, or their respective estates or interests, are unknown, or not fully known, to the commissioners of appraisal, it shall be sufficient for them to set forth and state in general terms the respective sums to be allowed and paid to the owners of and persons interested therein, generally, without specifying the names or estates or interests of such owner or persons interested, or any or either of them.

Thus amended by chap. 519, Laws of 1895.

**Filing of reports.**

§ 50. Each said report, signed by said commissioners, or a majority of them, shall be filed in the office of the clerk of the county in which said city is situated, and the commissioners of appraisal shall, in each case, notify the counsel to the corporation, or other principal adviser to said city, as soon as any such report is filed.

Thus amended by chap. 519, Laws of 1895.

**Notice of presentation of report to court.**

§ 51. The counsel to the corporation, or other principal legal adviser, or, in case of his neglect to do so within ten days after receiving notice of such filing, then any person interested in the proceedings, shall give notice that the said report will be presented for confirmation to the supreme court, at a special term



thereof, to be held in the judicial district in which said city is situated, at a time and place to be specified in said notice. The said notice shall contain a statement of the time and place of the filing of the report, and shall be published in two daily newspapers published in such city, for at least two weeks immediately prior to the presentation of said report for confirmation.

Thus amended by chap. 519, Laws of 1895.

### Confirmation of report.

§ 52. The application for the confirmation of each such report shall be made to the supreme court at a special term thereof, held in the judicial district in which said city is situated. Upon the hearing of the application for the confirmation thereof, the said court shall confirm such report and make an order containing a recital of the substance of the proceedings in the matter of the appraisal, with a general description of the property appraised and for which compensation is to be made, and shall also direct to whom the money is to be paid, and whether or not any part thereof, and, if so, what part, is to be deposited with the comptroller or other chief financial officer of said city with the chamberlain of said city, or if there be no chamberlain, with a bank or trust company to be designated by said court. Such report when so confirmed shall, except in the case of an appeal, as hereinafter provided, be final and conclusive, as well upon the said city as upon owners and all persons interested in or entitled to said property, and also upon all other persons whomsoever.

Thus amended by chap. 519, Laws of 1895.

### Payment of awards.

§ 53. The said city shall, within four calendar months after the confirmation of any report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate mentioned or referred to in said report, in whose favor any sum or sums of money shall be estimated and reported by said commissioners, the respective sum or sums so estimated and

reported in their favor respectively, with legal interest thereon from the date of filing the oath of said commissioners, and in case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate, in whose favor the same shall be so reported, his, her or their executors, administrators, successors or assigns at any time or times after application first made by him, her or them, to the comptroller or other chief financial officer of said city for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit, in any proper form of action against the said city in any court having cognizance thereof, and in which it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this act for property taken or extinguished for the purposes herein mentioned, and the report of said commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action.

Thus amended by chap. 519, Laws of 1895.

#### Payment of awards to chamberlain or bank in certain cases.

§ 54. Whenever the owner or owners, person or persons interested in any property taken or affected in such proceeding, or in whose favor any such sum or sums or compensation shall be so reported, shall be under the age of twenty-one years, or of unsound mind or absent from the city, and also in all cases where the name or names of the owner or owners, person or persons, interested in any such property shall not be set forth or mentioned in said report, or where the said owner or owners, person or persons, being named therein, can not, upon diligent inquiry, be found, or where there are adverse or conflicting claims to the money awarded as compensation, it shall be lawful for the said city to pay the sum or sums mentioned in said report, payable, or that would be coming to such owner or owners, person or persons, respectively, with interest, as aforesaid, to the chamberlain of said city, or, if there be no chamberlain, then to any

bank or trust company designated by the court in the order confirming the report of the commissioners of appraisal, to the credit of such owner or owners, person or persons, and such payments shall be as valid and effectual in all respects as if made to the said owner or owners, person or persons, interested therein, respectively, according to their just rights; and, provided, also, that in all and each and every such case and cases where any sum or sums or compensation reported by the commissioners in favor of any person or persons or parties whatsoever, whether named or not named in said report, shall be paid to any person or persons, or party or parties, whomsoever, when the same shall of right belong and ought to have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons, or party or parties, to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suit, as so much money had and received to his, her or their use by the person or persons, party or parties, respectively, to whom the same shall have been so paid.

This section added by chap. 752, Laws of 1894.

#### Claims for compensation for property taken.

§ 55. Every owner or person in any way interested in any property taken or extinguished as contemplated in this act, if he intends to make claim for compensation for such taking or extinguishment, shall within six months after the appointment of the commissioners of appraisal exhibit to the said commissioners a statement of his claim, and shall thereupon be entitled to offer testimony and to be heard before them touching such claim and the compensation proper to be made him, and to have a determination made by such commissioners of appraisal as to the amount of such compensation. Every person neglecting or refusing to present such claim within said time shall be deemed to have surrendered his claim for such compensation, except so far as he may be entitled, as such owner or person interested, to the whole or a part of the sum of money awarded by the

commissioners of appraisal as a just compensation for taking or extinguishing the property owned by said person, or in which the said person is interested.

Thus amended by chap. 587, Laws of 1901.

#### **Payment of awards.**

§ 56. Payment of the compensation awarded by said commissioners of appraisal to the persons named in their report (if not infants or persons of unsound mind), shall, in the absence of notice to the said city or other claimants to such award, protect the said city.

This section added by chap. 752, Laws of 1894.

#### **Specified claims and special reports thereon.**

§ 57. Said commissioners of appraisal may in their discretion take up any specified claim or claims, and finally ascertain and determine the compensation to be made thereon, and make a separate report with reference thereto, annexing to said report a copy of so much of the set of maps or plans and memoranda referred to in section forty-two of this act as indicates the property so reported on. Such report shall, as to claims therein specified, be the report required in this act, and the subsequent action with reference thereto, shall be had in the same manner as though no other claim were embraced in said proceeding, which, however, shall continue as to all claims upon which no such determination and report is made.

Thus amended by chap. 519, Laws of 1895.

#### **Appeals from appraisal and report to general term.**

§ 58. Within twenty days after notice of the confirmation of the report of the commissioners, as provided for in section fifty-two of this act, which notice may, as to parties who have not appeared before the commissioners, be given in the manner provided in section fifty-one of this act, either party may appeal to the general term of the supreme court in the department in which such commissioners were appointed, from the appraisal and report of the commissioners and the order confirming the

same. Such appeal shall be heard upon due notice thereof being given, according to the rules and practice of said court. On the hearing of such appeal the court may direct a new appraisal and determination of any question passed upon, by the same or new commissioners, in its discretion, and from any determination of the general term either party, if aggrieved, may take an appeal, which shall be heard and determined by the court of appeals. In the case of a new appraisal the second report shall be final and conclusive on all the parties and persons interested. If the amount of compensation to be made by such city is increased by the second report, the difference shall be paid by the comptroller or other chief financial officer of said city, to the parties entitled to the same, or shall be deposited with the chamberlain, or bank or trust company, as the court may direct, and if the amount is diminished the difference shall be refunded to the said city by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on the filing of the second report against the party liable to pay the same. But the taking of an appeal by any person or persons shall not operate to stay the proceedings under this act except as to the particular property with which the said appeal is concerned. Such appeal shall be heard upon the evidence taken before said commissioners, and any affidavits as to irregularities, and three printed copies of such evidence shall be furnished by the said city to the party taking the appeal, within ten days after the appeal is perfected, and such appeal may be heard on the evidence so furnished, and may be taken without security thereon.

This section added by chap. 752, Laws of 1894.

#### Power of court to amend defects, etc.

§ 59. The supreme court in the judicial district in which said city is situated shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act as may be necessary, and to direct such further notices to be given to any party in interest as it deems proper,

and also to appoint other commissioners in place of any who shall die, or refuse, or neglect to serve or be incapable of serving, or be removed. And the said court may at any time remove any commissioner of appraisal who in its judgment shall be incapable of serving, or who shall for any reason in its judgment be an unfit person to serve as such commissioner. The cause of such removal shall be specified in the order making the same. If in any particular it shall at any time be found necessary to amend any pleading or proceeding or to supply any defect therein arising in the course of any special proceeding authorized by this act, the same may be amended or supplied in such manner as shall be directed by the supreme court, which is hereby authorized to make such amendment or correction. Wherever in this act reference is made to the general term of the supreme court, it shall be deemed to include the appellate division of the supreme court for the district in which said city is situated, whenever said general term shall be superseded thereby.

Thus amended by chap. 519, Laws of 1895.

#### **Property acquired deemed acquired for public use.**

§ 60. All property acquired under the provisions of this act shall be and shall be deemed to have been acquired for public uses and purposes, and for the purpose of affording increased facilities for rapid transit between points within the city acquiring such property.

This section added by chap. 752, Laws of 1894.

#### **Expense payable from proceeds of bonds.**

§ 61. The moneys necessary and sufficient to be paid for any property, acquired in any manner under the provisions of this act, together with all expenses necessarily incurred in surveying, locating, and acquiring title to such property, and for surveying and locating the same, and for preparing the necessary maps and plans in connection therewith, shall be raised and paid out of the proceeds of bonds issued and sold as provided by

section thirty-seven of this act, and all such expenses so incurred in surveying, locating and acquiring title, and for preparing necessary maps and plans and also those incurred as provided in the next section shall be deemed a part of and included in the cost of constructing the road or roads, the construction of which rendered it necessary to acquire the property in the course of the acquisition of which such expenses may be incurred.

Thus amended by chap. 519, Laws of 1895.

#### **Pay of commissioners and employes.**

§ 62. The commissioners of appraisal appointed in pursuance of this act shall receive as compensation the sum of ten dollars per day for each day actually employed. They may employ the necessary clerks, stenographers and surveyors. The counsel to the corporation or other principal legal adviser to said city shall, either in person or by such cotounsel as he shall designate for the purpose, appear for and protect the interests of the city in all such proceedings in court and before the commissioners. The fees of the commissioners and the salaries and compensation of their employes, and all other necessary expenses in and about the said proceedings provided for by this act, and such allowance for counsel fees as may be made by order of the court, and all reasonable expenses incurred by said counsel to the corporation, or other principal legal adviser of said counsel designated by him for the proper presentation and defense of the interests of said city before said commissioners and in court, shall be paid by the comptroller or other chief financial officer of said city out of the funds referred to in the last preceding section. But such fees and expenses shall not be paid until they have been taxed before a justice of the supreme court in the judicial district in which said city is situated upon five days' notice to the counsel to the corporation, or other chief legal adviser of said city. Such allowance shall, in no case, exceed the limits prescribed by section thirty-two hundred and fifty-three of the code of civil procedure.

This section added by chap. 752, Laws of 1894.

**Proviso in case roads constructed at city's expense.**

§ 63. In case it shall be determined by vote of the people as provided by sections twelve and thirteen of chapter seven hundred and fifty-two of the laws of eighteen hundred and ninety-four to construct by and at the city's expense, then and in that event the road or roads so constructed shall be and remain the absolute property of the city so constructing it or them, and shall be and be deemed to be a part of the public streets and highways of said city, to be used and enjoyed by the public upon the payment of such fares and tolls, and subject to such reasonable rules and regulations as may be imposed and provided for by the board of rapid transit railroad commissioners in said city.

This section added by chap. 752, Laws of 1894, and amended by chap. 519, Laws of 1895

**Construction of act.**

§ 64. This act shall not be construed to repeal or in any manner affect chapter six hundred and six of the laws of eighteen hundred and seventy-five, entitled "An act to further provide for the construction and operation of a steam railway or railways in the counties of this State," or the acts amendatory thereof or supplementary thereto, or article five of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except so far as the said acts or either of them, would if this act had not been passed, authorize the appointment hereafter of any commissioners applied for as provided in section one of said act of eighteen hundred and seventy-five, or in section one hundred and twenty of said act of eighteen hundred and ninety, in any city or cities containing a population of over one million inhabitants, according to the last preceding national or State census, or authorize any commissioners already appointed pursuant to the provisions of such act or acts in any such city or cities, to fix, determine or locate any new route or routes, pursuant to the provisions of either of said acts. This act shall not be construed in any manner to affect the exer-



cise or enjoyment at any time, and from time to time hereafter, of any right or rights heretofore acquired, exercised or enjoyed by any corporation heretofore duly incorporated and organized or deriving powers and rights under the laws of this State. This act shall not affect or impair the exercise or enjoyment of any right or rights now possessed or heretofore acquired or heretofore authorized to be acquired, exercised or enjoyed by any street surface railroad corporation, except as herein otherwise expressly provided, and this act shall not be construed to repeal or in any manner affect chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," or either of the several acts amendatory thereof or supplementary thereto. This act shall not be construed to repeal or in any manner affect chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except as hereinabove expressly provided, or except so far as the provisions of the same conflict with the provisions of this act. But nothing in this section contained shall prevent the board of rapid transit railroad commissioners from laying out a route for a railway and constructing a railway, and such board shall have the right to lay out such route and construct such railway, over, under, along or across any street in, along, under or over which there shall be any existing railway, provided that the routes so laid out by the said board and the railway so constructed by it shall so pass over or under or at the side of such existing railway as not to interfere with its operation.

Thus amended by chap. 519, Laws of 1895. The number of this section was changed from 34 to 64 by chap. 752, Laws of 1894.

#### **As to surface railroads.**

§ 65. No railroad shall be constructed or operated upon the surface of any street, avenue or highway in the city of New York under the provisions or authority of this act, but this prohibition shall not extend to bridges or to viaducts or approaches connecting bridges with the surface, nor shall it be construed to prevent such construction or operation upon the surface of any

street, avenue, highway or bridge approach in the city of New York, under the provisions or authority of this act, for such distance as may be reasonably necessary in order to connect underground lines with bridges, viaducts or surface lines.

Thus amended by chap. 564, Laws of 1904. The number of this section was changed from 35 to 65 by chap. 752, Laws of 1894.

### Repeal.

§ 66. All acts and parts of acts local or general inconsistent with this act are hereby repealed.

The number of this section was changed from 36 to 66 by chap. 752, Laws of 1894.

§ 67. This act shall take effect immediately.

The number of this section was changed from 37 to 67 by chap. 752, Laws of 1894.

### Concurrent vote of rapid transit commissioners.

§ 10. Whenever it is expressly provided in the act hereby amended that any act of the board of rapid transit railroad commissioners shall be done by the concurrent vote of four of the members of said board, the act hereby amended is further amended so as to provide in such cases that such vote shall be that of six of such members.

Chap. 752, Laws of 1894.

### Termination of commission heretofore appointed.

§ 11. The commissioners of rapid transit heretofore appointed under the act hereby amended, or who became such commissioners by its terms, upon the organization of the board which shall succeed them pursuant to said act as hereby amended, shall cease to be such commissioners and shall transfer and deliver to the board of rapid transit railroad commissioners, provided for by the act hereby amended, as so amended, all furniture, books, maps, records, plans and other papers and property of what kind soever appertaining or belonging to or in the custody of the board of which they were commissioners, or in their possession, or under their control as such commissioners, or held by them, or for which they are responsible in their

official capacity. The expenses incurred by said commissioners for which an appropriation or appropriations shall have been made pursuant to section ten of the act hereby amended, shall be paid upon vouchers to be furnished by said commissioners and otherwise, as provided in said section. Said commissioners shall also be entitled to receive a reasonable compensation for the services which have been rendered by them, which may have been, or which shall be, determined on their application in the manner provided for in said section. The comptroller, or other chief financial officer of said city, is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of the receipt of taxes, and out of the proceeds of such bonds to pay said compensation so ascertained and determined, and the amount necessary to pay the principal and interest of said bonds shall be included in the tax levy of said city for the year next following the issue and sale of the same.

Chap. 752. Laws of 1894.

Submission of question of construction of road by city to electors.

§ 12. The said board of rapid transit railway commissioners shall cause the question, whether such railway or railways shall be constructed by the city and at the public expense, to be submitted to the vote of the qualified electors of the city within which such railway or railways is or are to be constructed, and to that end it shall be the duty of the said board, after completion of the detailed plans and specifications, as required by the act hereby amended, at least thirty days prior to the next general election, to file with the public officer or officers within the county in which such city is located, who may be charged with the duty of printing the ballots to be used at such election, a request that separate ballots be printed and supplied to such electors, one-half in number of which shall read: "For municipal construction of rapid transit road," and the other half in number of said ballots shall read, "Against municipal construction of rapid transit road." Upon such request being so filed, such ballots shall be printed and supplied to such electors at such general election, and separate ballot boxes shall be provided for the

reception of the same in each election district within such city, and the provisions of chapter six hundred and eighty of the laws of eighteen hundred and ninety-two, entitled "An act in relation to the elections constituting chapter six of the general laws," and any act or acts amendatory thereof or supplemental thereto shall apply thereto as far as the nature of the case may allow. No ballot which may be provided under this section shall be deemed invalid by reason of any error in dimensions, style of printing, or other formal defect, or through having been deposited in the wrong ballot box, but all of such ballots shall be canvassed and returned as if such formal defect had not existed, or as if they had been deposited in the box provided for the purpose. Upon the canvass of such votes by the board of county canvassers of the county in which such city is located, it shall be the duty of said board to file with the county clerk of said county a statement which shall declare the total number of votes cast in said city "for municipal construction of rapid transit road," and the total number so cast therein "against municipal construction of rapid transit road." And the said railway or railways shall be constructed by the said city and at the public expense, if it shall be found from such statements so filed that there is a majority of the votes so cast in favor of such municipal construction.

Chap. 752, Laws of 1894.

#### Duty of board in case of municipal construction.

§ 13. In case the majority of votes cast at such election shall be in favor of such municipal construction of said railway or railways, it shall be the duty of said board of rapid transit railway commissioners within thirty days after the official declaration of the said vote to proceed to construct the said railway or railways, and to make and let all contracts required for the performance of the work necessary to be done and performed in and about the construction thereof. All such contracts must, before execution, be approved as to form by the counsel to the corporation, or other chief legal adviser for said city.

Chap. 752, Laws of 1894.

**Act when to take effect.**

§ 14. This act shall take effect immediately; except that the building of said road, or the sale of the franchises as provided for in sections seven and thirty-four of the act hereby amended, as so amended, is postponed until, and made dependent upon, the determination of that question by the vote of the people as called for by sections twelve and thirteen of this act.

Chap. 752, Laws of 1894.

See provisions of Greater New York Charter, *ante*.

# Interstate Commerce Act and Kindred Acts, as Amended to September 30, 1905.

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(Showing Citations.)

An act to regulate commerce, approved February 4, 1887, and in effect April 5, 1887 (24 Statutes at Large, 379; 1 Supp. to Rev. Stat. U. S., 529), as amended by an act approved March 2, 1889 (25 Statutes at Large, 855; 1 Supp. to Rev. Stat. U. S., 684), and by an act approved February 10, 1891 (26 Statutes at Large, 743; 1 Supp. to Rev. Stat. U. S., 891), and by an act approved February 8, 1895 (28 Statutes at Large, 643; 2 Supp. to Rev. Stat. U. S., 369).

An act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled an act to regulate commerce, and amendments thereto, approved February 11, 1893 (27 Statutes at Large, 443; 2 Supp. to Rev. Stat. U. S., 80).

An act to further regulate commerce with foreign nations and among the States, approved February 19, 1903 (32 Statutes at Large).

An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled an act to protect trade and commerce against unlawful restraints and monopolies, an act to regulate commerce, or any other acts having a like purpose that may be hereafter enacted, approved February 11, 1903 (32 Statutes at Large).

An act supplementary to the act of July 1, 1862, entitled an act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, and also of the act of July 2, 1864, and other acts amendatory of said first-named act, approved August 7, 1888 (25 Statutes at Large, 382; 1 Supp. to Rev. Stat. U. S. 602).

An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes, approved March 2, 1893 (27 Statutes at Large, 531; 2 Supp. to Rev. Stat. U. S., 102), as amended by an act approved April 1, 1896 (29 Statutes at Large, 85; 2 Supp. to Rev. Stat. U. S., 455).

An act to amend an act entitled an act to promote the safety of employees and travelers, and so forth, approved March 2, 1893, and amended April 1, 1896, approved March 2, 1903 (32 Statutes at Large).

An act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission, approved March 3, 1901 (31 Statutes at Large, 1446).

**AN ACT TO REGULATE COMMERCE.**

Carriers and transportation subject to the act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid.

What the terms "railroad" and "transportation" include.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

**Charges must be reasonable and just.**

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

**Unjust discrimination defined and forbidden.**

§ 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

**Undue or unreasonable preference or advantage forbidden.**

§ 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

**Facilities for interchange of traffic.**

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable,



proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

#### **Long and short haul provision.**

§ 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however*, that upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

#### **Pooling of freights and division of earnings forbidden.**

§ 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any

case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

**Printing and posting of schedules of rates, fares, and charges.**

§ 6. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

**Printing and posting of schedules of rates on freight carried through a foreign country.**

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted

into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

**Ten days' public notice of advances in rates must be given; three days' public notice of reduction in rates must be given.**

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

**Published rates not to be deviated from.**

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

**Copies of schedules of rates, fares and charges must be filed with commission; copies of contracts, agreements and arrangements must be filed with commission; joint tariffs must be filed with commission; power of commission to prescribe publicity.**

Every common carrier subject to the provisions of this act shall file with the commission hereinafter provided for copies of

its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said commission of all changes made in the same. Every such common carrier shall also file with said commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said commission, in so far as may, in the judgment of the commission, be deemed practicable; and said commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

**Ten days' notice to commission of advance in joint rates, fares and charges; three days' notice to commission of reduction in joint rates, fares and charges; power of commission to make advances or reductions public.**

No advance shall be made in joint rates, fares, and charges shown upon joint tariffs, except after ten days' notice to the commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the commission as is above provided in the case of an advance of joint rates. The commission may make public such proposed advances, or such reduc-

tions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

**Joint rates, fares and charges not to be deviated from.**

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the commission in force at the time.

**Commission may prescribe forms of schedules of rates, fares and charges.**

The commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

**Penalties for neglect or refusal to file or publish rates, fares and charges.**

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the commissioners

appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several states and territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several states and territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

As amended March 2, 1889.

**Continuous carriage of freights not to be unnecessarily interrupted.**

§ 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

**Liability of common carriers for damages.**

§ 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in

this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

**Persons claiming to be damaged may complain to commission or bring suit in United States courts; officers, etc., of defendant may be compelled to testify.**

§ 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

**Penalties for violations of act by carriers, their officers or agents; fine and imprisonment.**

§ 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any

director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

**Penalties for false billing, etc., by carriers, their officers or agents;  
fine and imprisonment.**

Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon con-



viction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

**Penalties for false billing, etc., by shippers and other persons;  
fine and imprisonment.**

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

**Penalties for inducing common carriers to discriminate unjustly;  
fine and imprisonment; joint liability with carrier for damages.**

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as

against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

As amended March 2, 1899.

**Interstate commerce commissioners—how appointed; terms of commissioners.**

§ 11. That a commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the commissioner whom he shall succeed. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds

thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission.

Power and duty of commission to inquire into business of carriers; commission required to execute and enforce the provisions of this act; power of the commission to require attendance of witnesses and production of books and papers.

“§ 12. That the commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created; and the commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the commission, it shall be the duty of any district attorney of the United States to whom the commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

“Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case

of disobedience to a subpoena the commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

**Punishment for refusal to testify or produce books and papers.**

“And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

**Commission may order testimony to be taken by deposition.**

“The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation.

Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the commission, or agreed upon by the parties by stipulation in writing to be filed with the commission. All depositions must be promptly filed with the commission."

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

As amended, March 2, 1889, and February 10, 1891.

**Complaints to commission; how and by whom made; reparation by carriers before investigation; investigations by the commission.**

§ 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made

shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any state or territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

#### Finding of commission prima facie evidence in judicial proceedings.

§ 14. That whenever an investigation shall be made by said commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found. .

All reports of investigations made by the commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

**Reports and decisions; authorized publication to be competent evidence; publication and distribution of annual reports of commission.**

The commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the commission therein contained, in all courts of the United States, and of the several states, without any further proof or authentication thereof. The commission may also cause to be printed for early distribution its annual reports.

As amended March 2, 1889.

**Notice to common carriers to cease from violation of act; compliance with notice to cease from violation of act; reparation.**

§ 15. That if in any case in which an investigation shall be made by said commission it shall be made to appear to the satisfaction of the commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the commission; and if, within the time specified, it shall be made to appear to the commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record

by the commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Petition to United States courts in cases of disobedience to order of commission; power of United States courts to hear and determine cases of disobedience; writs of injunction or other process against carriers in cases of disobedience; punishment for refusal to obey writs of injunction or other proper process; fine; appeals to supreme court of United States.

§ 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the constitution of the United States, it shall be lawful for the commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of



said commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of

security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the commission it shall be the duty of the district attorney, under the direction of the attorney-general of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

**Petition to United States courts in cases of disobedience when trial by jury is necessary; trial by jury; trial by court; appeals to supreme court of United States; counsel or attorney's fees.**

If the matters involved in any such order or requirement of said commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the Circuit Court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial the findings of fact of said commission as set forth

in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said Circuit Court. If the judgment of the Circuit Court shall be in favor of the party complaining he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

As amended March 2, 1889.

**Interstate commerce commission—form of procedure; official seal.**

§ 17. That the commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the commission shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said commission and be heard, in person or by attorney. Every vote and official act of the commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said commission shall have an official

seal, which shall be judicially noticed. Either of the members of the commission may administer oaths and affirmations and sign subpoenas.

As amended March 2, 1889.

**Salaries of commissioners; secretary—how appointed; salary; offices and supplies; witness fees.**

§ 18. That each commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the court of the United States.

**Expenses of the commission—how paid.**

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the commission.

As amended.

**Principal office of the commission—sessions of the commission.**

§ 19. That the principal office of the commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the commission may hold special sessions in any part of the United States.

It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Carriers subject to the act must render full annual reports to commission; commission may prescribe methods of keeping accounts.

§ 20. That the commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such report shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the commission may require; and the said commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

**Annual reports of the commission to congress.**

§ 21. That the commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to congress, and copies of which shall be distributed as are the other reports transmitted to congress. This report shall contain such information and data collected by the commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the commission may deem necessary; and the names and compensation of the persons employed by said commission.

As amended March 2, 1889.

**Persons and property that may be carried free or at reduced rates; mileage, excursion, or commutation passenger tickets; passes and free transportation to officers and employees of railroad companies; pending litigation not affected by act—joint interchangeable five-thousand-mile tickets; amount of free baggage; publication of rates; sale of tickets; penalties.**

§ 22. That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to

prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act: *Provided further*, That nothing in this act shall prevent the issuance of joint interchangeable five-thousand mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

As amended March 2, 1889, and February 8, 1895.

**Jurisdiction of United States courts to issue writs of peremptory mandamus commanding the movement of interstate traffic or the furnishing of cars or other transportation facilities.**

*(New section.)* That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

Added March 2, 1889.

Public No. 41, approved February 4, 1887, as amended by Public No. 125, approved March 2, 1889, and Public No. 72, approved February 10, 1891. Public No. 38, approved February 8, 1895.

**AN ACT** in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no



person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the commission, whether such subpoena be signed or issued by one or more commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Public No. 54, approved February 11, 1893.

**AN ACT** to further regulate commerce with foreign nations and among the states.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any thing done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amenda-

tory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this act for offenses under said acts to regulate commerce, whether committed before or after the passage of this act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States

having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the interstate commerce commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

§ 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the interstate commerce commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

§ 3. That whenever the interstate commerce commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be

presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or state, it may be dealt with, inquired of, tried, and determined in either such judicial district or state, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the attorney-general shall direct, either of his own motion or upon the request of the interstate commerce commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February fourth, eighteen hundred and eighty-seven, entitled an act to regulate commerce and the acts amendatory thereof. And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person

shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the attorney-general in the name of the interstate commerce commission.

§ 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this act.

§ 5. That this act shall take effect from its passage.

Public, No. 103, approved, February 19, 1903.

AN ACT to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen

hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the attorney-general may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the supreme court for review in like manner as if taken there by appeal as hereinafter provided.

§ 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the supreme court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the supreme court in the manner now provided by law.

Public, No. 82, approved, February 11, 1903.

AN ACT supplementary to the act of July first, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the government the use of the same for postal, military, and other purposes," and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first-named act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all*

railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain, and operate, for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

§ 2. That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the revised statutes shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

§ 3. That if any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line shall refuse or fail in whole or in part, to

maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the interstate commerce commission, whose duty it shall thereupon be, under such rules and regulations as said commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the interstate commerce commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said interstate commerce commissioners: *Provided*, That the said commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

§ 4. That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the attorney-general of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property,



of exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

§ 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the interstate commerce commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any state or territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such state or territory, and such service shall be held by the court good and sufficient.

§ 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days

from and after the passage of this act, to file with the interstate commerce commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the interstate commerce commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the attorney-general of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the interstate commerce commission to inform the attorney-general of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

§ 7. That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter,

act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require, and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the postmaster-general now has under title sixty-five of the revised statutes to fix rates, or of the government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Public No. 237, approved August 7, 1888.

#### **Automatic couplers and continuous brakes.**

AN ACT to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

§ 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

§ 3. That when any person, firm, company, or corporation

engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

§ 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

§ 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.\*

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\*Prescribed standard height of drawbars: Standard-gauge roads, 34½ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred: and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

As amended April 1, 1896.

§ 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

§ 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public No. 113, approved March 2, 1893. Amended April 1, 1896.

AN ACT to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first eighteen hundred and ninety-six, or which are used upon street railways.

§ 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and

act, the interstate commerce commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said interstate commerce commission shall be subject to the like penalty as failure to comply with any requirement of this section.

§ 3. That the provisions of this act shall not take effect until September first, nineteen hundred and three. Nothing in this act shall be held or construed to relieve any common carrier, the interstate commerce commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

Public, No. 133, approved, March 2, 1903.

AN ACT requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* It shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions of trains or where any train or part of a train accidentally leaves the track, and of all accidents which may occur to its passengers or employees while in the service of such common carrier and actually on duty, which report shall state the nature and causes thereof, and the circumstances connected therewith.

§ 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

§ 3. That neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or action for damages growing out of any matter mentioned in said report.

§ 4. That the Interstate Commerce Commission is authorized to prescribe for such common carriers a method and form for making the reports in the foregoing section provided.

Public, No. 171, approved, March 3, 1901.







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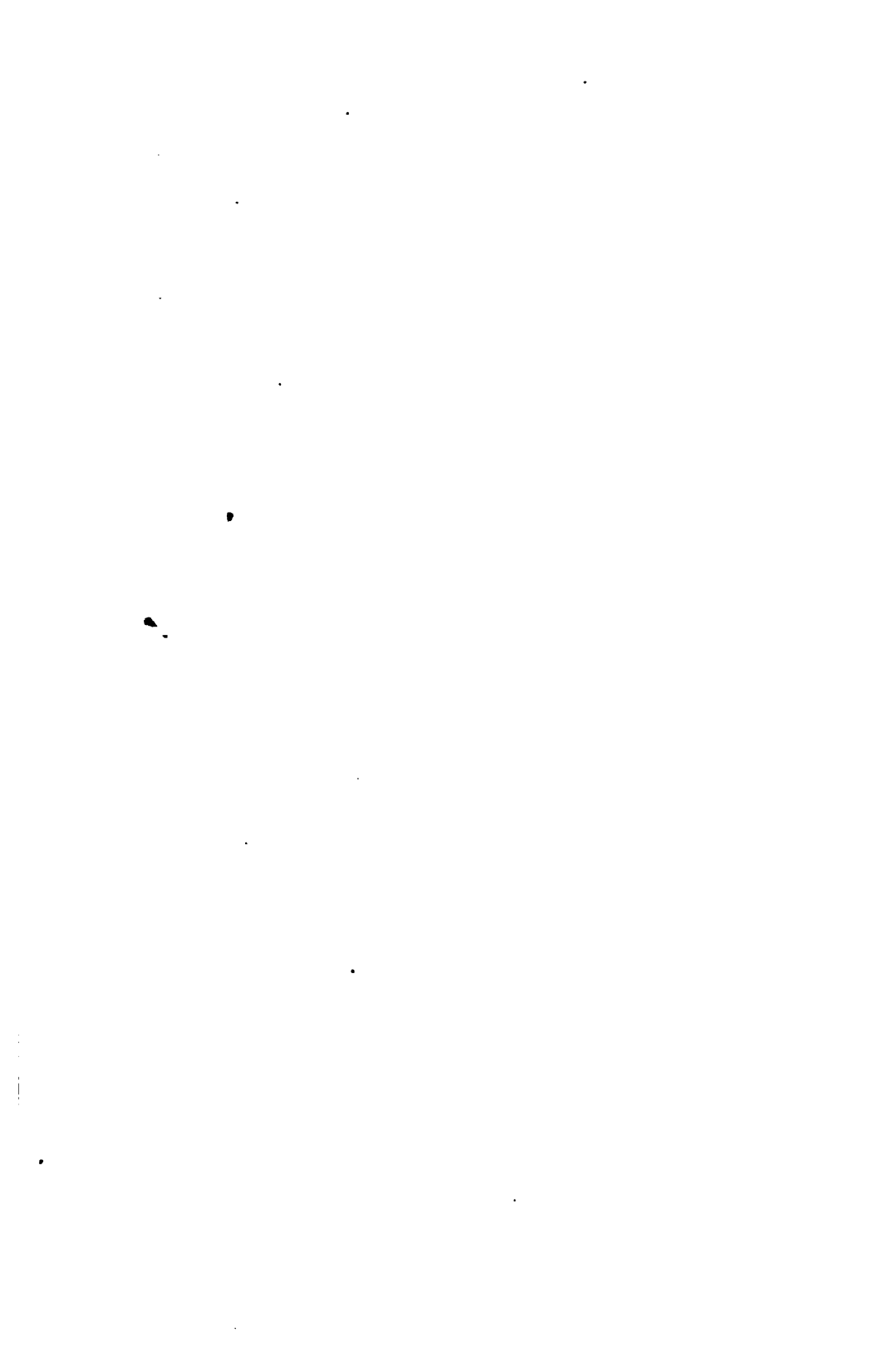
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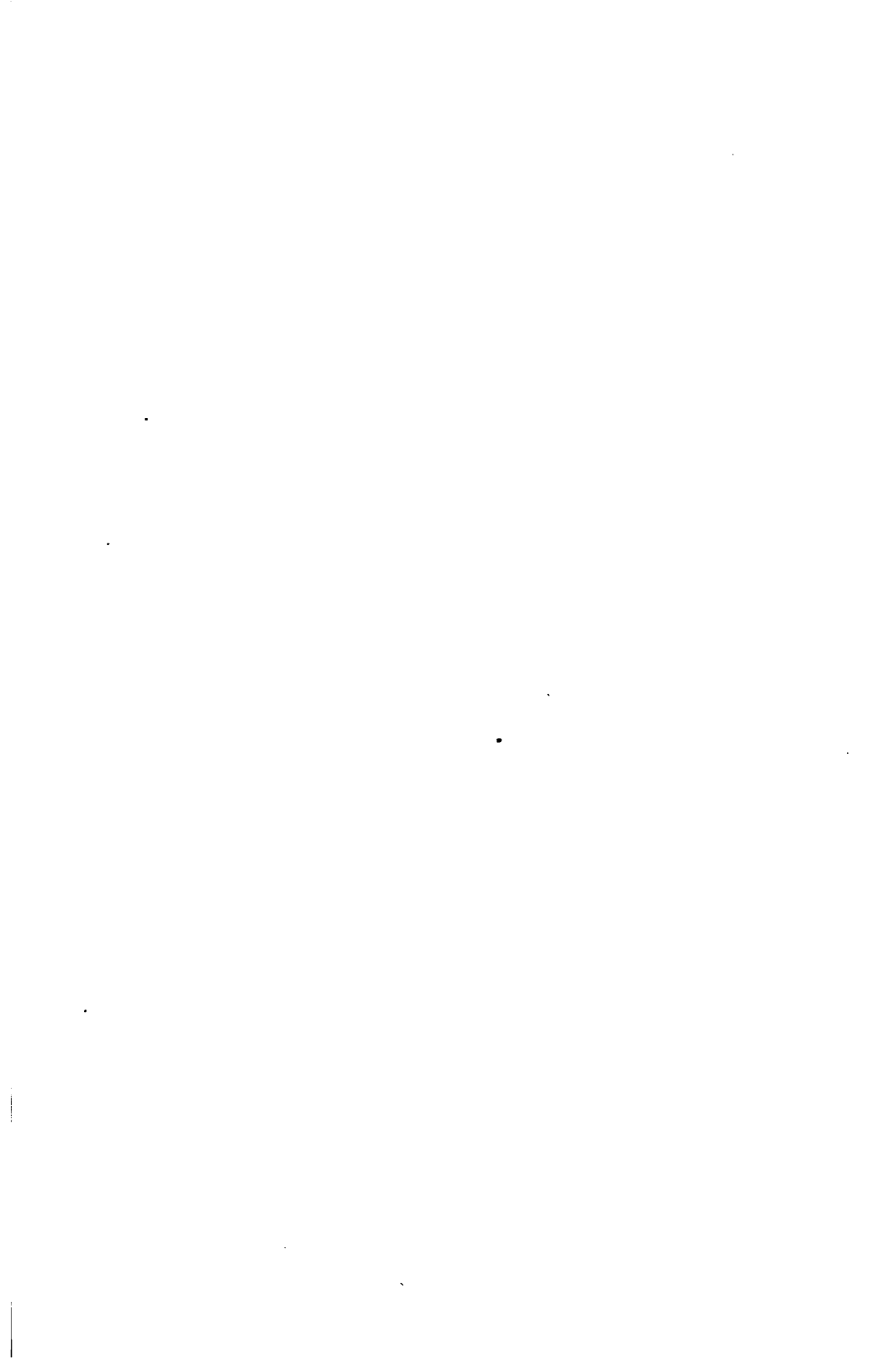
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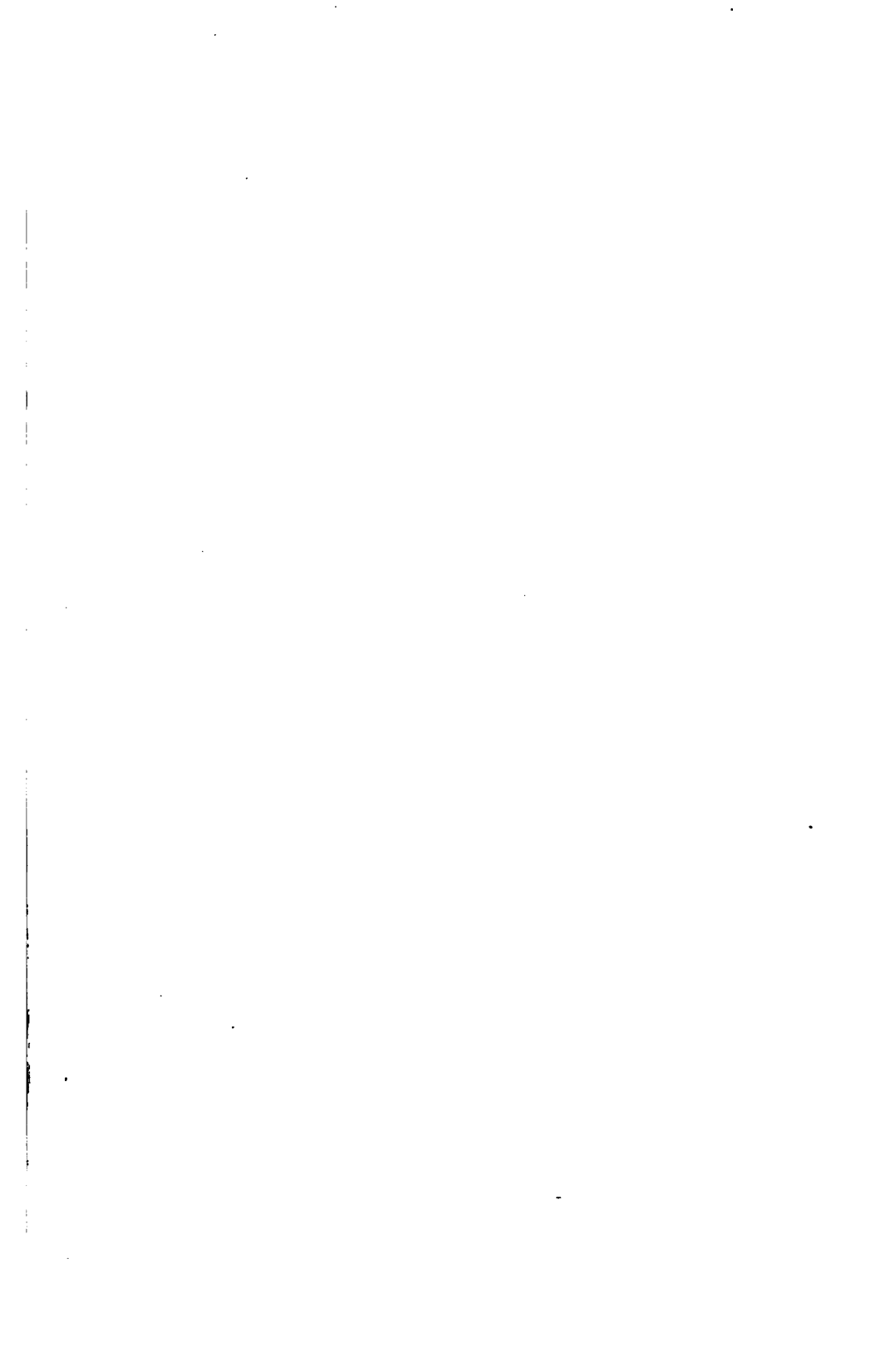
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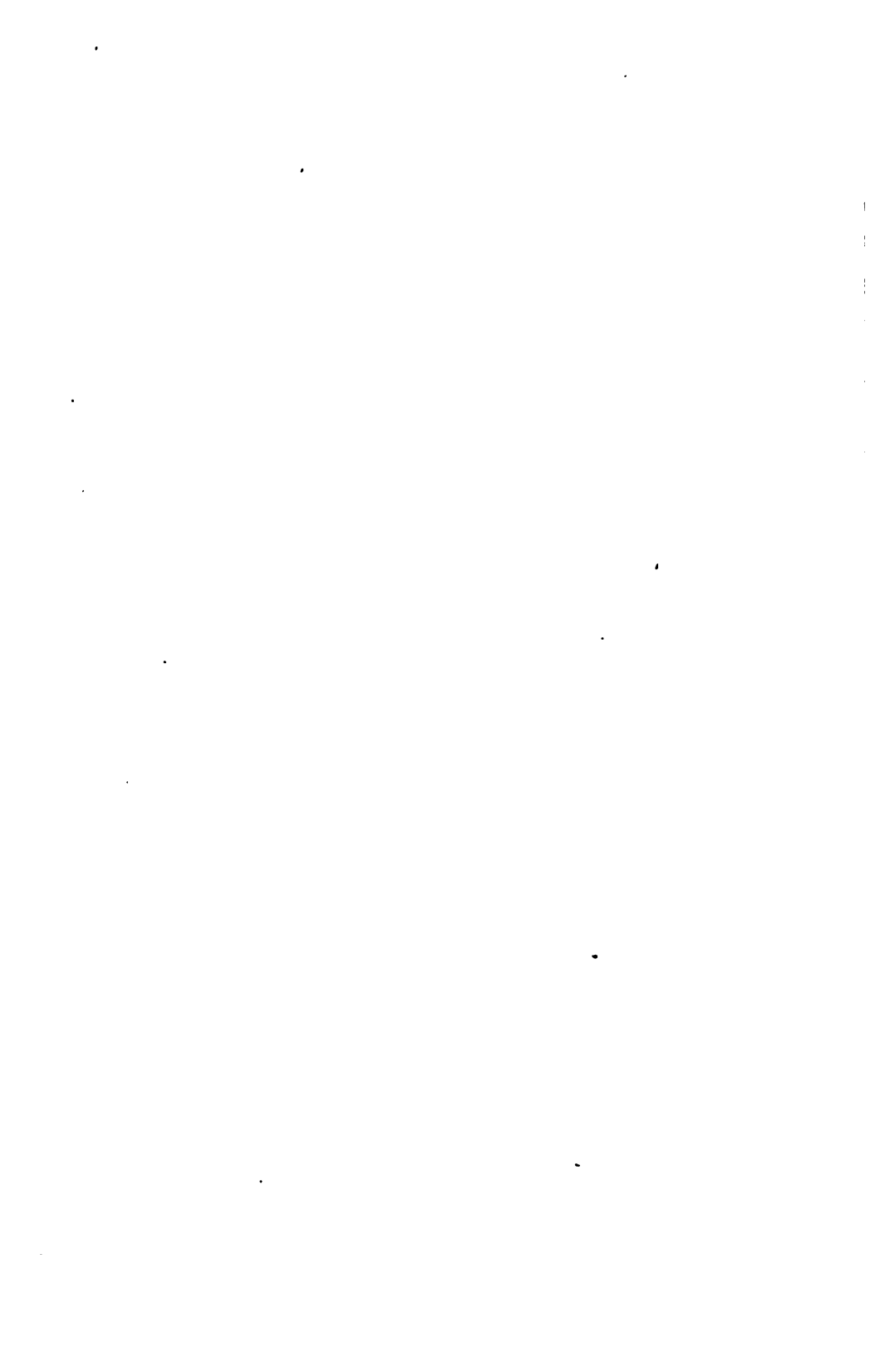




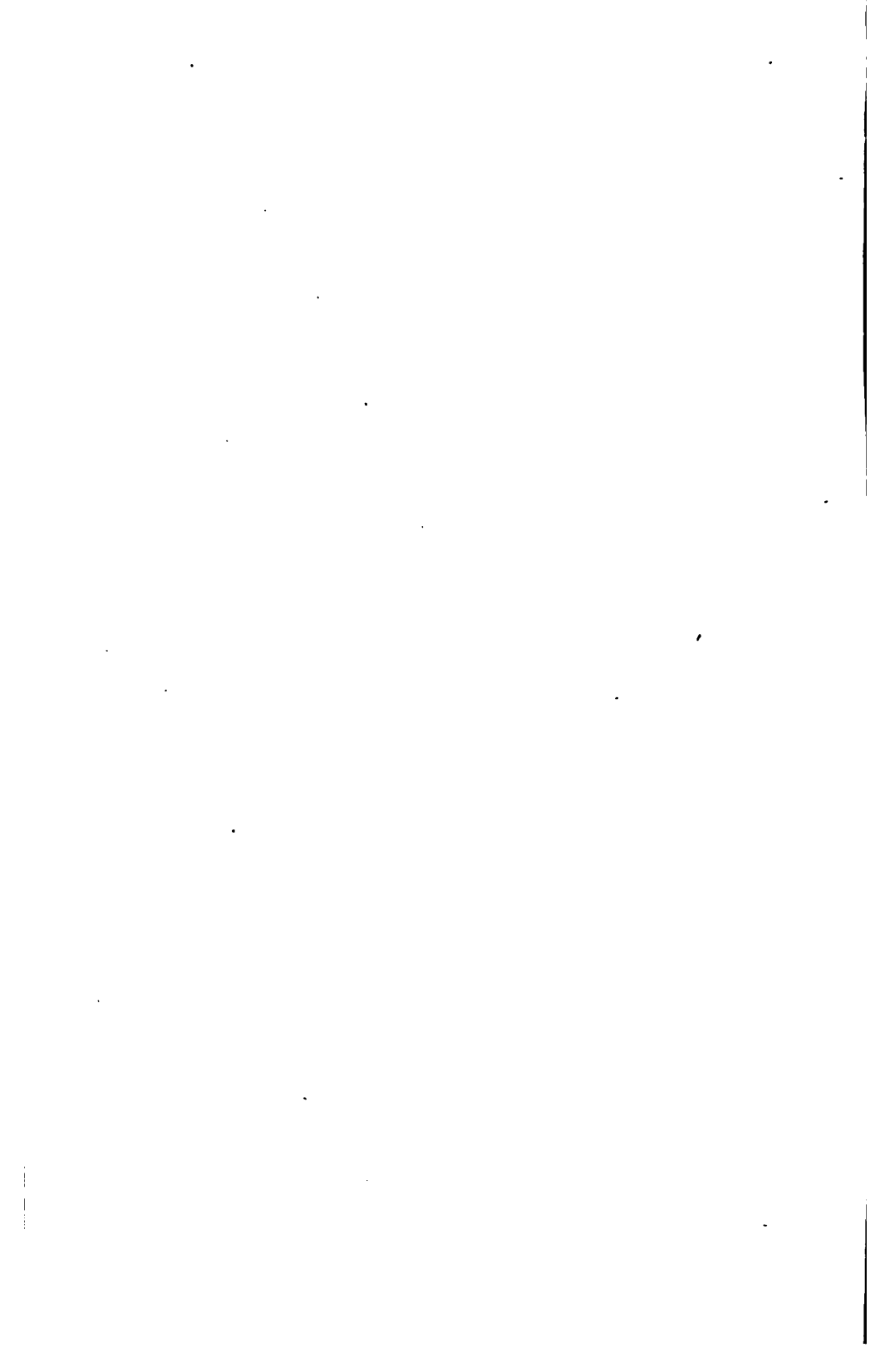


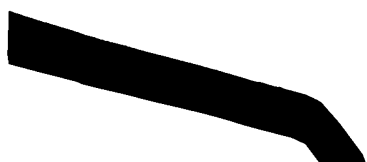
















83887 v.1  
New York (State) Board of Railroad com  
missioners. 23d annual report. 1905.

HOPKINS RAILWAY

83887 v.1

New York (State) Board of Railroad Commissioners. 23d annual report. 1905.

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83887 v.1

HOPKINS RAILWAY

New York (State) Board of ~~Liberty~~ Road com  
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